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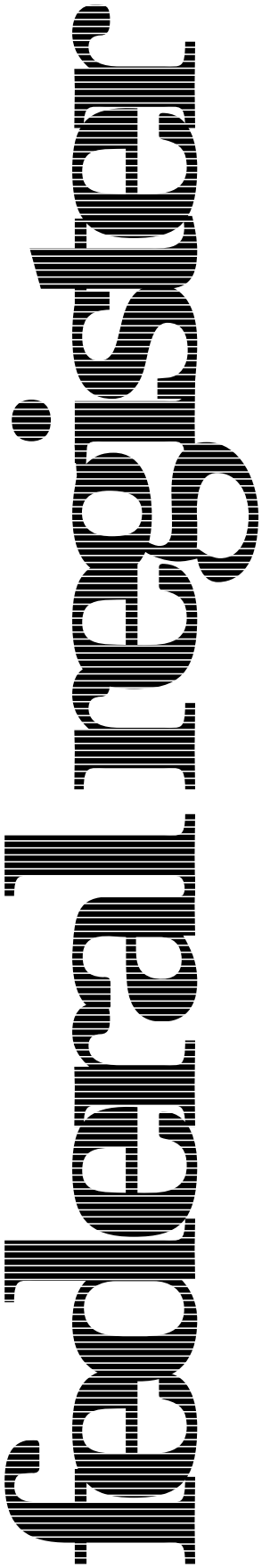

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(TWO BRIEFINGS)

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register

Vol. 60, No. 18

Friday, January 27, 1995

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AG12

Prevailing Rate Systems; Special Wage Schedules for Supervisors of Negotiated Rate Bureau of Reclamation Employees

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing a final rule to establish special wage schedules for the supervisors of certain Bureau of Reclamation, Department of the Interior, employees who negotiate their wage rates.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Paul Shields, (202) 606–2848.

SUPPLEMENTARY INFORMATION: On September 7, 1994, at 59 FR 46201, the Office of Personnel Management (OPM) published a proposed rule to establish special wage schedules for the supervisors of certain Bureau of Reclamation, Department of the Interior, employees who negotiate their wage rates, with a 30-day comment period. During the comment period, which ended October 7, 1994, OPM received comments from a local union officer and six employees.

Discussion of Comments

1. The local union officer and two employees said they thought the new special schedule system would be expensive and recommended that the current process of linking the pay of supervisors with bargaining unit rates of pay be continued or modified.

We do not agree with these comments. This new special schedule proposal was developed by the Bureau of Reclamation working in partnership with the covered supervisors and reflects agreements reached in those discussions. When the agency removed the supervisors from the bargaining units in 1990, the only pay system available was the Federal Wage System (FWS) under the provisions of title 5, United States Code. The agency received authority to temporarily continue (as an agency ''set-aside'' practice) the historical pay differentials at each location, subject to the statutory pay limitations of the FWS. Pay setting for these supervisors is complicated by the combined factors of wage negotiations for bargaining unit employees, delays in those negotiations, pay limitation statutes, and FWS locality pay rates. The purpose of this special schedule is to eliminate, in the pay-setting process for these supervisors, the dependence on negotiated rates for the bargaining unit and the associated complications of delays in negotiations.

Based on the information currently available, the proposed special schedule will not result in a significant increase in operating costs. Under the new survey process, the special wage survey for supervisors will be timed to coincide with the annual survey that is done for bargaining unit employees. The surveys will be done at the same time with many of the same firms being surveyed for both purposes. The special wage survey committees and data collector personnel will be the same, with a few additions for the supervisory survey.

2. Several questions were raised about how special wage area boundaries were set up. Special wage area boundaries were generally established to correspond to the boundaries currently being used for the wage surveys for bargaining unit employees. However, in some cases, areas were consolidated either because of the desire to simplify the survey and wage setting process, the geographic location of the Bureau of Reclamation projects, the desire to permit use of the same survey company in more than one project, or the similarity of the rates being paid to the Bureau of Reclamation supervisors in consolidated areas.

Three employees recommended that the survey area for the Hungry Horse Project Office be extended to include Pend Oreille County, Washington, which would include Boundary Dam, a facility of Seattle City Light Company. As a city government facility, Boundary Dam does not meet the statutory FWS requirement that only private industry companies be surveyed. However, since Pend Oreille County is within the survey area used for the bargaining unit employees, and the Bureau of Reclamation is attempting to coordinate surveys for the supervisors with those of the bargaining unit, we have added Pend Oreille County to the Hungry Horse Project Office survey area. This will also facilitate the process in the future should the local area survey committee need to add private industry survey companies in that county.

3. The local union officer and three employees commented on the industries and companies to be included in the special surveys. The union suggested that only unionized companies be surveyed. We do not agree with this suggestion because under statutes and regulations, FWS pay-setting is based on a determination of private industry prevailing rates, regardless of union organization. The three employees expressed concern that private industry electric utility and hydro-electric companies would not be included in the surveys. No changes in the regulation are needed. These industries are expressly included by the regulation at § 532.285(c)(1) (Standard Industrial Classification Major Group 49—Electric, Gas, and Sanitary Services).

4. Two employees expressed concern that the survey jobs being used in the special surveys would not cover jobs in large hydro-electric facilities with multi-crafts. We do not feel a change is necessary. This special schedule process takes into account the number of crafts supervised and the range of work supervised through application of the classification criteria found in Factor 1 and Subfactor IIIA of the FWS Job Grading Standard for Supervisors. These job aspects are covered by Subfactor IIIA, Scope of Assigned Work Function and Organizational Authority, which addresses aspects reflecting the variety of crafts and the range of work. For example, at Level A–4, the scope and diversity of work supervised is addressed. Similarly, one of the elements used in distinguishing the difference among situations in Factor 1, Nature of Supervisory Responsibility, is the number of levels of supervision through which work activities are

controlled. More levels of supervision tend to be associated with a greater number of crafts supervised.

One employee asked how the four levels for Supervisors I–IV fit into the survey process. As explained in § 532.285 (b) and (c)(3) of the final regulation, survey jobs representing positions at up to four levels will be tailored to correspond to the positions of each covered supervisor in that area. They will be matched to private industry jobs in each special wage area. Special schedule rates for each position will be based on prevailing rates for that particular job in private industry. The special survey and wage schedule for a given area includes only those occupations and levels having employees in that area. The regulation was not changed in this respect.

5. An employee expressed concern that current supervisors would not be adequately compensated for their experience upon conversion to the new special schedule as compared to newly hired supervisors. The new special schedule provides special consideration to current supervisors in the first year of implementation. Under § 532.285(f)(2), current supervisors are placed in step 2 of the new special schedule, unless their rate of pay exceeds step 2, in which case they will be placed in step 3. Pay retention benefits will apply to any employee whose current rate of pay exceeds step 3. New employees will enter at step 1 of the grade, unless a higher rate is established in accordance with the advanced in-hire rate procedure. The new special schedule provides added compensation for the experience of current employees, and no changes are necessary.

6. Two employees recommended that the definition of compensation measured in industry surveys be expanded to include other company benefits, such as a company vehicle with gas provided to get to and from work, paid insurance coverage, company housing, and company stock purchase options. The regulation will not be modified in this regard. Under FWS statutes and practices, surveyed wages do include certain bonuses, incentive rates, and cost of living allowances. Surveying the additional benefits suggested would require a change in the law.

7. Finally, one employee commented that while the beginning month of the survey for each special area is specified in the rule, implementation or effective dates for the new schedules are not specified. No change is necessary because, as with the regular FWS, beginning dates for the special surveys are specified in the regulation, and by statute (5 U.S.C. 5344(a)) increases in rates of pay are effective not later than the first day of the first pay period beginning on or after the 45th day following the date the survey is ordered to be made.

Other Changes

The special schedule survey cycle in this rule has been changed from 3 years to 2 years because it has been determined that the 3-year proposal exceeded OPM's regulatory flexibility. The prevailing rate law grants OPM great flexibility to establish special schedules that differ from regular schedules in terms of wage area boundaries; industrial, geographic, and occupational survey coverage; step rate structures; and wage rate progressions. However, the regulatory flexibility to adjust the normal 2-year survey cycle allows only for more frequent, not less frequent full-scale surveys.

In § 532.285(f)(1), the reference to ''fiscal year 1995'' has been deleted because this final rule will not be effective until well into the fiscal year.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, OPM is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

2. Subpart B is amended by adding § 532.285 to read as follows:

§ 532.285 Special wage schedules for supervisors of negotiated rate Bureau of Reclamation employees.

(a) The Department of the Interior shall establish and issue special wage schedules for wage supervisors of negotiated rate wage employees in the Bureau of Reclamation. These schedules shall be based on annual special wage surveys conducted by the Bureau of Reclamation in each special wage area. Survey jobs representing Bureau of Reclamation positions at up to four levels will be matched to private industry jobs in each special wage area. Special schedule rates for each position will be based on prevailing rates for that particular job in private industry.

(b) Each supervisory job shall be described at one of four levels corresponding to the four supervisory situations described in Factor I and four levels of Subfactor IIIA of the FWS Job Grading Standard for Supervisors. They shall be titled in accordance with regular FWS practices, with the added designation of level I, II, III, or IV. The special survey and wage schedule for a given special wage area includes only those occupations and levels having employees in that area. For each position on the special schedule, there shall be three step rates. Step 2 is the prevailing rate as determined by the survey; step 1 is 96 percent of the prevailing rate; and step 3 is 104 percent of the prevailing rate.

(c) For each special wage area, the Bureau of Reclamation shall designate and appoint a special wage survey committee, including a chairperson and two other members (at least one of whom shall be a supervisor paid from the special wage schedule), and one or more two-person data collection teams (each of which shall include at least one supervisor paid from the special wage schedule). The local wage survey committee shall determine the prevailing rate for each survey job as a weighted average. Survey specifications are as follows for all surveys:

(1) Tailored to the Bureau of Reclamation activities and types of supervisory positions in the special wage area, private industry companies to be surveyed shall be selected from among the following Standard Industrial Classification Major Groups: 12 coal mining; 13 oil and gas extraction; 14 mining and quarrying of nonmettalic minerals, except fuels; 35 manufacturing industrial and commercial machinery and computer equipment; 36 manufacturing electronic and other electrical equipment and components, except computer equipment; 42 motor freight transportation and warehousing; 48 communications; 49 electric, gas, and sanitary services; and 76 miscellaneous repair services. No minimum employment size is required for surveyed establishments.

(2) Each local wage survey committee shall compile lists of all companies in the survey area known to have potential job matches. For the first survey, all companies on the list will be surveyed. Subsequently, companies shall be removed from the survey list if they

prove not to have job matches, and new companies will be added if they are expected to have job matches. Survey data will be shared with other local wage survey committees when the data from any one company is applicable to more than one special wage area.

(3) For each area, survey job descriptions shall be tailored to correspond to the position of each covered supervisor in that area. They will be described at one of four levels (I, II, III, or IV) corresponding to the definitions of the four supervisory situations described in Factor I and four levels of Subfactor IIIA of the FWS Job Grading Standard for Supervisors. A description of the craft, trade, or labor work supervised will be included in each supervisory survey job description.

(d) Special wage area boundaries shall be identical to the survey areas covered by the special wage surveys. The areas of application in which the special schedules will be paid are generally smaller than the survey areas, reflecting actual Bureau of Reclamation worksites and the often scattered location of surveyable private sector jobs. Special wage schedules shall be established in the following areas:

The Great Plains Region

Special Wage Survey Area (Counties)

Montana: All counties except Lincoln, Sanders,Lake, Flathead, Mineral, Missoula, Powell, Granite, and Ravalli
Wyoming: All counties except Lincoln, Teton, sublette, Uinta, and Sweetwater
Colorado: All counties except Moffat, Rio Blanco, Garfield, Mesa, Delta, Montrose, San Miguel, Ouray, Delores, San Juan, Montezuma, La Plata, and Archuleta
North Dakota: All counties
South Dakota: All counties

Special Wage Area of Application (Counties)

Montana: Broadwater, Jefferson,Lewis and Clark, Yellowstone, and Bighorn Counties
Wyoming: All counties except Lincoln, Teton, Sublette, Uinta, and Sweetwater
Colorado: Boulder, Chaffee, Clear Creek, Eagle, Fremont, Gilpin, Grand, Lake, Larimer, Park, Pitkin, Pueblo, and Summitt
Beginning month of survey: August

The Mid-Pacific Region

Special Wage Survey Area (Counties)

California: Shasta, Sacramento, Butte, San Francisco, Merced, Stanislaus

Special Wage Area of Application (Counties)

California: Shasta, Sacramento, Fresno, Alameda, Tehoma, Tuolumne, Merced
Beginning month of survey: October

Green Springs Power Field Station

Special Wage Survey Area (Counties)

Oregon: Jackson

Special Wage Area of Application (Counties)

Oregon: Jackson
Beginning month of survey: April

Pacific NW. Region Drill Crew

Special Wage Survey Area (Counties)

Montana: Flathead, Missoula
Oregon: Lane, Bend, Medford, Umatilla, Multnomah
Utah: Salt Lake
Idaho: Ada, Canyon, Adams
Washington: Spokane, Grant, Lincoln, Okanogan

Special Wage Area of Application (Counties)

Oregon: Deschutes, Jackson, Umatilla
Montana: Missoula
Idaho: Ada
Washington: Grant, Lincoln, Douglas, Okanogan, Yakima
Beginning month of survey: April

Snake River Area Office (Central Snake/ Minidoka)

Special Wage Survey Area (Counties)

Idaho: Ada, Caribou, Bingham, Bannock

Special Wage Area of Application (Counties)

Idaho: Gem, Elmore, Bonneville, Minidoka, Boise, Valley, Power
Beginning month of survey: April

Hungry Horse Project Office

Special Wage Survey Area (Counties)

Montana: Flathead, Missoula, Cascade, Sanders, Lake
Idaho: Bonner
Washington: Pend Oreille

Special Wage Area of Application (Counties)

Montana: Flathead
Beginning month of survey: March

Grand Coulee Power Office (Grand Coulee Project Office)

Special Wage Survey Area (Counties)

Oregon: Multnomah
Washington: Spokane, King

Special Wage Area of Application (Counties)

Washington: Grant, Douglas, Lincoln, Okanogan
Beginning month of survey: April

Upper Columbia Area Office (Yakima)

Special Wage Survey Area (Counties)

Washington: King, Yakima
Oregon: Multnomah

Special Wage Area of Application (Counties)

Washington: Yakima
Oregon: Umatilla
Beginning Month of Survey: September

Colorado River Storage Project Area

Special Wage Survey Area (Counties)

Arizona: Apache, Coconino, Navajo
Colorado: Moffat, Montrose, Routt, Gunnison, Rio Blanco, Mesa, Garfield, Eagle, Delta, Pitkin, San Miguel, Delores, Montezuma, La Plata, San Juan, Ouray, Archuleta, Hindale, Mineral
Wyoming: Unita, Sweetwater, Carbon, Albany, Laramie, Goshen, Platte, Niobrara, Converse, Natrona, Fremont, Sublette, Lincoln
Utah: Beaver, Box Elder, Cache, Carbon, Daggett, Davis, Duchesne, Emery, Garfield, Grand, Iron, Juab, Kane, Millard, Morgan, Piute, Rich, Salt Lake, San Juan, Sanpete, Sevier, Summit, Tooele, Uintah, Utah, Wasatch, Washington, Wayne, Weber

Special Survey Area of Application (Counties)

Arizona: Coconino
Colorado: Montrose, Gunnison, Mesa
Wyoming: Lincoln
Utah: Daggett
Beginning month of survey: March

Elephant Butte Area

Special Wage Survey Area (Counties)

New Mexico: Grant, Hidalgo, Luna, Doña Ana, Otero, Eddy, Lea, Roosevelt, Chaves, Lincoln, Sierra, Socorro, Catron, Cibola, Valencia, Bernalillo, Torrance, Guadalupe, De Baca, Curry, Quay
Texas: El Paso, Hudspeth, Culberson, Jeff Davis, Presido, Brewster, Pecos, Reeves, Loving, Ward, Winkler
Arizona: Apache, Greenlee, Graham, Cochise

Special Wage Area of Application (Counties)

New Mexico: Sierra
Beginning month of survey: June

Lower Colorado Dams Area

Special Wage Survey Area (Counties)

Nevada: Clark
California: Los Angeles
Arizona: Maricopa

Special Wage Area of Application (Counties)

Nevada: Clark
California: San Bernardino
Arizona: Mohave
Beginning month of survey: August

Yuma Projects Area

Special Wage Survey Area (Counties)

California: San Diego
Arizona: Maricopa, Yuma

(**Note:** Bureau of Reclamation may add other survey counties for dredge operator supervisors because of the uniqueness of the occupation and difficulty in finding job matches.)

Special Wage Area of Application (Counties)

Arizona: Yuma
Beginning month of survey: November (Maintenance) and April (Dredging)

Bureau of Reclamation, Denver, CO, Area

Special Wage Survey Area (Counties)

Colorado: Jefferson, Denver, Adams, Arapahoe, Boulder, Larimer

Special Wage Survey Area of Application (Counties)

Colorado: Jefferson
Beginning month of survey: February

(e) These special schedule positions will be identified by pay plan code XE, grade 00, and the Federal Wage System occupational codes will be used. New employees shall be hired at step 1 of the

position. With satisfactory or higher performance, advancement between steps shall be automatic after 52 weeks of service.

(f) (1) In the first year of implementation, all special areas will have full-scale surveys.

(2) Current employees shall be placed in step 2 of the new special schedule, or, if their current rate of pay exceeds the rate for step 2, they shall be placed in step 3. Pay retention shall apply to any employee whose rate of basic pay would otherwise be reduced as a result of placement in these new special wage schedules.

(3) The waiting period for within-grade increases shall begin on the employee's first day under the new special schedule.

[FR Doc. 95–2013 Filed 1–26–95; 8:45 am]

BILLING CODE 6325–01–M

5 CFR Part 532

RIN 3206–AG53

Prevailing Rate Systems; Abolishment of New York, New York, Special Wage Schedules for Printing Positions

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing interim regulations to abolish the Federal Wage System special wage schedule for printing positions in the New York, New York, wage area. Printing and lithographic employees in New York, New York, will now be paid rates from the regular New York, New York, wage schedule.

DATES: This interim rule becomes effective on January 27, 1995. Comments must be received by February 27, 1995. Employees paid rates from the New York, New York, special wage schedule for printing positions will continue to be paid from that schedule until their conversion to the regular New York, New York, wage schedule effective on the first day of the first full pay period beginning on or after January 27, 1995.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Assistant Director for Compensation Policy, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, Room 6H31, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Paul Shields, (202) 606–2848.

SUPPLEMENTARY INFORMATION: The Department of Defense recommended to the Office of Personnel Management that the New York, New York, Printing and Lithographic wage schedule be abolished and that the regular New York, New York, wage schedule apply to printing employees in the New York, New York, wage area. This recommendation was based on the fact that the New York, New York, special printing wage survey would produce special schedule rates lower than the regular area wage schedule rates for all but one grade level, XS–7. Because regulations provide that the special printing schedule rates may not be lower than the regular schedule rates for an area, New York, New York, special printing schedule rates for all grades but XS–7 are currently based on the New York, New York, regular wage schedule rates. The number of employees paid from this special schedule has declined in recent years from a total of 80 employees in 1985 to a current total of 18 employees, only 1 of whom is in grade XS–7.

With the reduced number of employees, it has been difficult to comply with the requirement that workers paid from the special printing schedule participate in the special wage survey process. The last full-scale survey involved the substantial work effort of contacting 103 printing establishments spread over 19 counties.

No employee's wage rate will be reduced upon conversion to the regular schedule. Because of the effects of pay cap provisions and the fact that the special printing schedule rates are based upon payable (restricted) regular schedule rates, the 17 employees paid rates based on the regular wage schedule will receive higher wage rates upon conversion. The one employee in grade XS–7 who currently receives the higher, printing survey-based rate will be entitled to continue at that rate under pay retention rules.

The Federal Prevailing Rate Advisory Committee has reviewed this recommendation and by consensus has recommended approval.

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to section 553(d)(3) of title 5, United States Code, I find that good cause exists for making this rule effective in less than 30 days. The notice is being waived and the regulation is being made effective in less than 30 days because preparations for the January 1995 New York, New York, survey must begin immediately.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, OPM is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

§ 532.279 [Amended]

2. In § 532.279, paragraph (j)(5) is removed, and paragraphs (j)(6) through (j)(10) are redesignated as paragraphs (j)(5) through (j)(9), respectively.

[FR Doc. 95–2014 Filed 1–26–95; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

[T. D. 95–11]

Customs Service Field Organization; Extension of Port Limits of Hilo and Kahului, Hawaii

AGENCY: U. S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations pertaining to the field organization of Customs by extending the geographical limits of the ports of entry of Hilo and Kahului, Hawaii. The boundaries of the port of Hilo are extended to include the entire island of Hawaii. The boundaries of the port of Kahului are extended to include the entire island of Maui. The changes are being made to include all potential Customs work sites within the ports. These changes will enable Customs to obtain more efficient use of its personnel, facilities, and resources and to provide better service to carriers, importers, and the general public.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Brad Lund, Office of Inspection and Control, 202–927–0192.

SUPPLEMENTARY INFORMATION:

Background

As part of its continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public, Customs is amending § 101.3, Customs Regulations (19 CFR 101.3), to expand the geographical limits of the ports of entry of Hilo and Kahului, Hawaii.

The expanded boundaries of the port of Hilo will include the entire island of Hawaii. The expanded boundaries of the port of Kahului will include the entire island of Maui. Expansion of the port limits for these two islands will improve service to the public and will make better use of staffing resources.

Comments

Customs published a Notice of Proposed Rulemaking in the **Federal Register** (59 FR 43313) on August 23, 1994, which invited the public to comment on proposed changes to the limits of the ports as described above.

Seventeen comments were received, all of which approved of the proposed expansions. Accordingly, the amendments are being published in final as they were proposed.

Revised Port Limits

The revised port limits for the port of Hilo are as follows:

In the State of Hawaii: The entire island of Hawaii.

The revised port limits for the port of Kahului are as follows:

In the State of Hawaii: The entire island of Maui.

Regulatory Flexibility Act and Executive Order 12866

Although Customs solicited public comments on these port extensions, no notice of proposed rulemaking was required because the port extensions relate to agency management and organization. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Agency organization matters such as these port extensions are exempt from consideration under Executive Order 12866.

Drafting Information

The principal author of this document was Janet L. Johnson. Regulations Branch. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Exports, Imports, Organization and functions (Government agencies).

Amendments to the Regulations

Accordingly, Part 101 of the Customs Regulations is amended as set forth below:

PART 101—GENERAL PROVISIONS

1. The general authority citation for Part 101 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 17, Harmonized Tariff Schedule of the United States), 1623, 1624.

2. The list of Customs regions, districts and ports of entry in § 101.3(b) is amended by adding the reference ''T. D. 95–11'', alongside both ''Hilo'' and ''Kahului'' in the column headed ''Ports of entry'' in the Honolulu, Hawaii District of the Pacific Region.

George J. Weise,

Commissioner of Customs.

Approved: December 29, 1994.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 95–2075 Filed 1–26–95; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

Drug Products Containing Certain Active Ingredients Offered Over-the-Counter (OTC) for Certain Uses

CFR Correction

In title 21 of the Code of Federal Regulations, parts 300 to 499, revised as of April 1, 1994, on page 63, in § 310.545, paragraph (a)(7), the entry for ''Menthol'' is corrected by removing the parenthetical phrase.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MT23–1–6402a; FRL–5128–1]

Approval and Promulgation of Air Quality Implementation Plans; Montana; State Implementation Plan for East Helena SO_2 Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA fully approves the State implementation plan (SIP) submitted by the State of Montana to achieve attainment of the primary National Ambient Air Quality Standards (NAAQS) for sulfur dioxide (SO_2). The SIP was submitted by Montana to satisfy certain federal requirements for an approvable nonattainment area SO_2 SIP for East Helena. The effect of EPA's final action is to make the East Helena Primary SO_2 NAAQS SIP federally enforceable.

DATES: This final rule is effective March 28, 1995, unless adverse comments are received by February 27, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments should be addressed to Meredith A. Bond, 8ART–AP, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2405. Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations: Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2405; and Montana Department of Health and Environmental Sciences, Air Quality Bureau, Cogswell Building, Helena, Montana 59620–0901; and U.S. EPA Air & Radiation Docket Information Center, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Meredith Bond at (303) 293–1764.

SUPPLEMENTARY INFORMATION:

I. Background

East Helena, Montana, is a small community located about 5 miles east of the State capitol, Helena. The major industrial source affecting the SO_2 concentrations in the ambient air is the Asarco, Incorporated, primary lead smelter. The following summarizes the regulatory history of the East Helena SO_2 nonattainment area.

On September 19, 1975, EPA approved the revision to the Montana SIP which sets forth a sulfur oxide control strategy to provide for attainment and maintenance of the SO_2 NAAQS near Asarco in East Helena (40 FR 43216).

The Clean Air Act Amendments of 1977 provided for non-attainment designations for areas violating the NAAQS. On March 3, 1978, EPA designated the East Helena area as nonattainment for SO_2 based on historical ambient monitoring data

showing primary standard violations (43 FR 8962).

Prior to this official SO_2 nonattainment designation, the Montana Department of Health and Environmental Sciences (MDHES) and Asarco had been working on a plan to reduce SO_2 emissions from the East Helena facility. The main focus of this plan was the construction of a double contact sulfuric acid plant to control SO_2 emissions from the sintering process. Following construction of the acid plant in July 1977, SO_2 concentrations in the rural areas around East Helena decreased dramatically. However, there were still violations being monitored at the Kennedy Park site.

In response to the Part D SIP requirements of the 1977 CAA Amendments, on April 24, 1979, Montana submitted a SIP revision for the East Helena SO_2 nonattainment area. This SIP revision identified the continued monitored violations as being caused by low-level emissions from three 110-foot stacks serving the smelter's blast furnace operations. The control strategy included replacing the three 110-foot stacks with a single 425-foot stack (for which Asarco claimed stack height credit of 375 feet), and setting daily and six-hour emission limits on the new stack. On November 20, 1980, EPA conditionally approved the SIP revision (45 FR 76685). EPA's action was conditioned upon adequate demonstration of good engineering practice (GEP) stack height for the blast furnace stack, and revised dispersion modeling if GEP height was determined to be below 375 feet.

Asarco completed a field tracer study demonstration in 1982, and subsequently proceeded to complete construction of its new stack based on the study results justifying a stack height of 375 feet as necessary to overcome the effects of downwash causing monitored ambient SO_2 violations near the smelter.

On July 5, 1983, EPA proposed to approve the SIP and GEP demonstration as satisfying the conditional approval requirements (48 FR 30696). But, final action was not taken due to pending litigation concerning the federal stack height regulations. As a result of this litigation, the federal stack height regulations were revised on July 5, 1985. Among other things, these revisions changed the requirements for justifying stack heights above the formula height established in 40 CFR 51.100(ii)(2). For this reason, several years later Asarco abandoned its efforts to take credit for the additional blast furnace stack height above formula height. EPA's stack height analysis and findings for the Asarco facility stacks are discussed further later in this document.

The SIP was further revised with respect to East Helena in order to provide for a catalyst screening procedure at Asarco's acid plant. EPA approved this revision on May 1, 1984 (54 FR 18482).

The 1990 Clean Air Act Amendments [1] (''1990 Amendments''), effective November 15, 1990, reaffirmed the nonattainment designation of East Helena with respect to the primary and secondary SO_2 NAAQS, under section 107(d)(4)(B). See 56 FR 56706 (Nov. 6, 1991) and 40 CFR 81.327 (specifying designation for East Helena). Section 191 required that any state which was lacking an approved SIP for an area designated nonattainment with respect to the national *primary* ambient air quality standard for SO_2 must resubmit a plan meeting the requirements of the amended Act within 18 months of enactment of the amendments, thus by May 15, 1992. For the secondary SO_2 NAAQS SIP for East Helena, EPA established November 15, 1993, as the submittal due date in an action published in the **Federal Register** on October 7, 1993 (58 FR 52237).

The air quality planning requirements for SO_2 nonattainment areas are set out in subparts 1 and 5 of part D of title I of the Act.[2] The amended Clean Air Act requires nonattainment area SIP submittals to contain, among other things, provisions to assure that reasonable available control measures (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology) are implemented, and that provide for attainment of the primary SO_2 standards within 5 years of enactment of the 1990 Amendments, or November 15, 1995 (see Sections 172(c) and 192(b) of the Act). EPA has issued detailed guidance that describes the Agency's preliminary interpretations regarding SO_2 nonattainment area SIP requirements. [57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992) (hereafter called the ''General Preamble'')]. Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of title I advanced in today's action and the supporting rationale.

[1] The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Public Law No. 101–549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended (''the Act''). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. Sections 7401, *et seq.*

[2] Subpart 1 contains provisions applicable to nonattainment areas generally and subpart 4 contains provisions specifically applicable to PM_{10} nonattainment areas. At times, subpart 1 and subpart 4 overlap or conflict. EPA has attempted to clarify the relationship among these provisions in the ''General Preamble'' and, as appropriate, in today's notice and supporting information.

II. This Action

The primary SO_2 NAAQS SIP for East Helena was developed by the MDHES in consultation with Asarco, the major SO_2 source in East Helena. The State's efforts have been coordinated with EPA to ensure compliance with SIP requirements. The Montana Board of Health and Environmental Sciences (MBHES) approved a stipulation between the MDHES and Asarco on March 18, 1994, to limit SO_2 emissions from that company's lead smelting operations. This binding agreement was submitted to EPA on March 30, 1994, as part of a revision of the Montana SIP. This SIP revision addresses only the 24-hour and annual primary SO_2 NAAQS; Montana will address the 3-hour secondary SO_2 NAAQS in a forthcoming submittal. Hence, this action addresses only the primary SO_2 NAAQS.

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565–66). In this action, EPA is approving the primary SO_2 NAAQS SIP revision for the East Helena, Montana, nonattainment area which was due on May 15, 1992, and was submitted by the Governor of Montana on March 30, 1994. EPA is also approving the stack height demonstrations for the Asarco, East Helena, primary lead smelter. EPA believes that the East Helena plan meets the applicable requirements of the Act.

Since the East Helena Primary SO_2 NAAQS SIP was not submitted by May 15, 1992, as required by section 191 of the Act, EPA made a finding that the State failed to submit the SIP, pursuant to section 179 of the Act, and notified the Governor in a letter dated June 16, 1992. See 57 FR 48614 (October 27, 1992). After the East Helena Primary SO_2 NAAQS SIP was submitted on March 30, 1994, EPA found the submittal complete pursuant to section 110(k)(1) of the Act and notified the Governor accordingly in a letter dated May 12, 1994. This completeness determination corrected the State's deficiency and, therefore, terminated the sanctions clock under section 179 of the Act.

A. Analysis of State Submission

1. Procedural Background

The Act requires States to observe certain procedural requirements in

developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[3] Section 110(1) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing. The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565). The EPA's completeness criteria for SIP submittals are set out at 40 CFR Part 51, Appendix V. The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA six months after receipt of the submission.

To entertain public comment on the implementation plan for East Helena, the State of Montana, after providing adequate notice, held a public hearing on March 18, 1994, to address the stipulation between the MDHES and Asarco, and the East Helena primary SO_2 NAAQS SIP. Following the public hearing, the stipulation and SIP were adopted by the State. The Governor of Montana submitted the SIP to EPA on March 30, 1994. The SIP submittal was reviewed by EPA to determine completeness in accordance with the completeness criteria set out at 40 CFR Part 51, Appendix V. The submittal was found to be complete, and a letter dated May 12, 1994, was forwarded to the Governor indicating the completeness of the submittal and the next steps to be taken in the review process.

2. Accurate Emission Inventory

Section 172(c)(3) of the Act requires that nonattainment plan provisions include a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. The emission inventory also should include a comprehensive, accurate, and current inventory of allowable emissions in the area.

The MDHES identified two major sources of SO_2 in the East Helena area: the Asarco Smelter complex and the Ash Grove cement plant. Emission inventory information for the Ash Grove Kiln stack was derived from an engineering calculation to determine potential SO_2 emissions. Assuming all heat input to the kiln is supplied by 6% sulfur coke, a potential emission rate of 2.7 tons SO_2/day was used for this facility in this SIP revision. Actual SO_2 emissions for this source are approximately 1.0 ton per day.

A detailed SO_2 emission inventory of the Asarco smelter facility was conducted in the fall of 1991. A complete testing protocol was approved by EPA along with the final emission inventory report. The report provided a complete and accurate SO_2 emission inventory of the entire facility for use in dispersion modeling studies.

In general, the SO_2 emission sources were separated into three major categories: Point sources, volume sources, and fugitive sources. The results of the point source tests confirmed Asarco's three major sources of SO_2 emissions to be the Sinter Plant Baghouse stack, Acid Plant stack, and Blast Furnace Baghouse stack. Volume and fugitive sources were also quantified.

The MDHES also maintains an annual SO_2 emission inventory for the Asarco facility. This inventory does not include all sources that were measured in the field sampling study, but does include the major sources of SO_2 emissions. Totals for 1990 (including only the three major point sources) were 17,491.0 tpy; totals for 1991 (with building volume and fugitive area sources included) were 18,031.7 tpy. Thus, annual SO_2 emissions for the Asarco facility are approximately 18,000 tpy. For the Ash Grove kiln stacks, emissions for the same years were less than 280 tpy.

EPA is approving the emissions inventory because it is accurate and comprehensive and provides a sufficient basis for determining the adequacy of the attainment demonstration for this area consistent with the requirements of sections 172(c)(3) and 110(a)(2)(K) of the Act. For further details see the TSD.

3. RACM (Including RACT)

As noted, the initial SO_2 nonattainment areas must submit provisions to assure that RACM (including RACT) are implemented as expeditiously as possible (see section 172(c)(1)). The General Preamble contains a detailed discussion of EPA's interpretation of the RACM (including RACT) requirement (see 57 FR 13547 and 13560–13561), and defines RACT for SO_2 as that control technology which is necessary to achieve the NAAQS.

The Asarco, East Helena, primary lead smelter was identified as the major source of the SO_2 nonattainment problem in East Helena. The control strategy includes setting operational SO_2 emission limits for several of the major emission points of the Asarco facility.

Asarco developed a set of emissions parameters for combined emissions from the two largest SO_2 emission points, the sinter and blast furnace stacks, in order to provide maximum operating flexibility while still protecting the NAAQS. The set of compliance parameters for combined emissions from the Blast Furnace Stack and Sinter Plant Stack consists of the following relationships:

for:

$0 < S \leq 22.93$, $B = 29.64 - (0.180)\ S$

$22.93 < S \leq 54.54$, $B = 38.74 - (0.577)\ S$

$54.54 < S \leq 60.27$, $B = 76.60 - (1.271)\ S$

where:

B=Daily emissions of SO_2 from the Blast Furnace Stack in tons per calendar day

S=Daily emissions of SO_2 from the Sinter Plant Stack in tons per calendar day

In addition to the compliance parameters for combined emissions from the sinter and blast furnace stacks, the March 18, 1994, stipulation also sets absolute SO_2 emission limitations for the sinter and blast furnace stacks at 60.27 tons per calendar day and 29.64 tons per calendar day, respectively. Daily emissions of SO_2 from the Acid Plant Stack shall not exceed 4.30 tons per calendar day. SO_2 emissions from the Concentrate Storage and Handling Building Stack (including the exhaust from the new Sinter Plant Ventilation System baghouse) shall not exceed 46.00 pounds per hour or 0.552 tons per calendar day. All of these emission limits, including the compliance parameters for the combined emissions of the sinter and blast furnace stacks, were effective September 1, 1994.

Two additional emission limitations on minor stack sources at the Asarco facility take effect June 30, 1995: SO_2 emissions from the Crushing Mill Baghouse Stacks #1 and #2 shall not exceed 0.19 and 0.37 tons per calendar day, respectively.

The stipulation details the use of continuous emission monitoring systems to determine compliance with the emission limitations for the sinter plant stack, blast furnace stack, and acid plant stack. Emission testing provisions for the remaining stacks are also specified.

Provisions have also been incorporated into the stipulation to insure that sulfur dioxide emissions from miscellaneous volume and fugitive sources do not increase beyond their current levels. Those provisions include: limiting fugitive emissions of

[3] Also Section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of Section 110(a)(2).

SO_2 from the Sinter (D&L) Building by restricting openings to the building enclosure; maintaining and operating all processes and systems within the Cottrell Penthouse, Mist Precipitator Building, and Pump Tank Building such that conditions which contribute to volume source SO_2 emissions from these sources are not significantly worsened compared to conditions existing during the preparation of the January 20, 1992, emission inventory report; and maintaining and operating all processes and systems associated with the Acid Plant Scrubber Towers such that conditions which contribute to volume source SO_2 emissions from this source are not significantly worsened compared to conditions existing during the preparation of the January 20, 1992, emission inventory report.

A more detailed discussion of the control strategy can be found in the TSD for this action. EPA has reviewed the State's documentation and concluded that it adequately justifies the control measures to be implemented. The implementation of Montana's SO_2 nonattainment plan will result in the attainment of the primary SO_2 NAAQS by November 15, 1995. By this action EPA is approving the East Helena primary SO_2 plan's RACM (including RACT) in its entirety, noting that additional dispersion modeling and control strategy evaluation will be necessary in the future to address the secondary, 3-hour standard.

4. Demonstration

The initial SO_2 nonattainment areas are required to submit a demonstration (including air quality modeling) showing that the plan will provide for attainment as expeditiously as practicable, but no later than November 15, 1995. EPA-approved dispersion models ISCST and RTDM were used to predict ambient SO_2 concentrations around the Asarco facility. The primary SO_2 NAAQS are 365 micrograms per cubic meter ($\mu g/m^3$) (0.14 parts per million (ppm)), averaged over a 24-hour period and not to be exceeded more than once per year, and 80 $\mu g/m^3$ (0.03 ppm) annual arithmetic mean (see 40 CFR 50.4). The demonstration for East Helena indicates that the primary SO_2 NAAQS will be attained by November 15, 1995. For a more detailed description of the attainment demonstration and the control strategies used, see the TSD for this action.

5. Enforceability Issues

All measures and other elements in the SIP must be enforceable by the State and EPA (see sections 172(c)(6) and 110(a)(2)(A) of the Act and 57 FR 13556). The EPA criteria addressing the enforceability of SIPs and SIP revisions were stated in a September 23, 1987, memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, *et al.* (see 57 FR 13541). Nonattainment area plan provisions also must contain a program to provide for enforcement of control measures and other elements in the SIP (see section 110(a)(2)(C) of the Act).

The specific control measure contained in the SIP are addressed above in section 3, ''RACM (including RACT).'' The March 18, 1994, stipulation between the MDHES and Asarco has been approved by the MBHES in accordance with section 75–2–301 of the Montana Clean Air Act and effectuated by a MBHES order, and since the MDHES can enforce MBHES orders, the MDHES has independent enforcement powers. The Montana Clean Air Act grants authority to the MDHES to enforce orders of the Board (section 75–2–112, Montana Code Annotated (MCA)). Sections 75–2–412 and 75–2–413, MCA, authorize the MDHES to seek criminal and civil penalties for violations of any Board order in the amount of $10,000.00 per day of violation, respectively. In addition, Section 75–2–431, MCA, authorizes the MDHES to seek noncompliance penalties for any violation of a Board order. Noncompliance penalties shall be no less than the economic value which a delay in compliance may have for the owner of such a source, including the capital costs of compliance and debt service over a normal amortization period (not to exceed ten years of operation) and maintenance costs foregone as a result of noncompliance.

EPA believes that the State's existing air enforcement program will be adequate to ensure implementation of this SIP revision. The TSD for this action contains further information on enforceability requirements, responsibilities, and resources intended to support effective implementation of the control measures.

6. Reasonable Further Progress

Section 171(l) of the amended Act defines RFP as ''such annual incremental reductions in emissions of the relevant air pollutant as are required by [part D] or may reasonably be required by EPA for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date.'' As discussed in the General Preamble, for SO_2, there is usually a single ''step'' between pre-control nonattainment and post-control attainment. Therefore, for SO_2, with its discernible relationship between emissions and air quality and significant and immediate air quality improvements, RFP is construed as ''adherence to an ambitious compliance schedule.''

Asarco became responsible for the reporting requirements outlined in the SIP after July 1, 1994. The emission and process limitations outlined above became effective on September 1, 1994. These timelines allow Asarco sufficient opportunity to implement the control strategy, and to gain operating experience before the requirements become effective. The emission limitations went into effect September 1, 1994, a date far in advance of the November 15, 1995 attainment date. EPA concurs that this program constitutes adherence to an ambitious compliance schedule and therefore demonstrates reasonable further progress.

7. Contingency Measures

Section 172(c)(9) of the amended Act defines contingency measures as measures in a SIP which are to be implemented if an area fails to make RFP or fails to attain the NAAQS by the applicable attainment date. Contingency measures become effective without further action by the State or EPA, upon determination by EPA that the area has failed to either make reasonable further progress or to attain the SO_2 NAAQS by the applicable statutory deadline. For SO_2 programs, EPA interprets ''contingency measures'' to mean that the State agency has a comprehensive program to identify sources of violations of the SO_2 NAAQS and to undertake an aggressive follow-up for compliance and enforcement, including expedited procedures for establishing enforceable consent agreements pending the adoption of revised SIP's. (See 57 FR 13547, April 16, 1992.)

The East Helena control strategy is based upon a dispersion modeling analysis which indicates that the Primary SO_2 NAAQS will be protected. The use of continuous emission monitoring systems will ensure that the emission limitations in the plan are not exceeded. In addition, a compliance network of ambient air monitoring stations will be maintained around the smelter at locations associated with predicted maximum concentrations. This monitoring system should quickly identify any violations of the NAAQS, if they should occur.

If violations should occur, the MDHES would immediately begin negotiations with Asarco to reach agreement on control measures to

correct the problem. Asarco would then implement those measures to assure compliance as expeditiously as possible. Additionally, the MDHES has emergency powers under Section 75.2.402 of the Montana Clean Air Act to require curtailment of a source if the source is causing imminent danger to human health or safety.

III. Stack Height Analysis

A. Background

On February 8, 1982 (47 FR 5864), EPA promulgated final regulations limiting stack height credits and other dispersion techniques as required by Section 123 of the CAA. These regulations were challenged in the U.S. Court of appeals for the D.C. Circuit by the Sierra Club Legal Defense Fund, Inc., the Natural Resources Defense Council, Inc., and the Commonwealth of Pennsylvania in *Sierra Club* v. *EPA*. On October 11, 1983, the court issued its decision ordering EPA to reconsider portions of the stack height regulations, revising certain portions and upholding other portions.

On February 28, 1984, the electric power industry filed a petition for a writ of certiorari with the U.S. Supreme Court. On July 2, 1984, the Supreme Court denied the petition, and on July 18, 1984, the Court of Appeals mandate was formally issued, implementing the court's decision and requiring EPA to promulgate revisions to the stack height regulations within six months. The promulgation deadline was ultimately extended to June 27, 1985.

Revisions to the stack height regulations were proposed on November 9, 1984 (49 FR 44878), and promulgated on July 8, 1985 (50 FR 27892). The revisions redefined a number of specific terms including ''excessive concentrations,'' ''dispersion techniques,'' ''nearby,'' and other important concepts, and modified some of the bases for determining good engineering practice (GEP) stack height.

Pursuant to section 406(d)(2) of the CAA, all States were required to: (1) Review and revise, as necessary, their SIPs to include provisions that limit stack height credit and dispersion techniques in accordance with the revised regulations and (2) review all existing emission limitations to determine whether any of these limitations have been affected by stack height credits above GEP or any other dispersion techniques. For any limitations so affected, States were to prepare revised limitations consistent with their revised SIPs. All SIP revisions and revised emission limits were to be submitted to EPA within 9 months of the EPA stack height regulations promulgation.

Subsequently, EPA issued detailed guidance on carrying out the necessary reviews. For the review of emission limitations, States were to prepare inventories of stacks greater than 65 meters in height and sources with emissions of sulfur dioxide (SO_2) in excess of 5,000 tons per year. These limits correspond to the *de minimis* stack height and the *de minimis* SO_2 emission exemption from prohibited dispersion techniques. These sources were then subjected to detailed review for conformance with the revised regulations. State submissions were to contain an evaluation of each stack and source in the inventory.

Subsequent to the July 8, 1985 promulgation, the stack height regulations were again challenged in *NRDC* v. *Thomas*, 838 F. 2d 1224 (D.C. Cir. 1988). On January 22, 1988, the U.S. Court of Appeals for the D.C. Circuit issued its decision affirming the regulations for the most part, but remanding three provisions to the EPA for reconsideration. These are: Grandfathering stack height credits for sources that raise their stacks prior to October 1, 1983, up to the height permitted by GEP formula height (40 CFR 51.100 (kk)(21)), dispersion credit for sources originally designed and constructed with merged or originally designed and constructed with merged or multi-flue stacks, (40 CFR 51.100 (hh)(2)(ii)(A)), and grandfathering credit for the refined (H + 1.5 L) formula height for sources unable to show reliance on the original (2.5H) formula (40 CFR 51.100 (ii)(2)).

B. State of Montana Submissions

EPA promulgated approval of a SIP revision which revised the Administrative Rules of Montana governing stack height and dispersion techniques on June 7, 1989 (54 FR 24334). In that same action, EPA approved Montana's stack height demonstration analyses with the exception of the Asarco East Helena lead smelter facility stacks. This is the first time that EPA is taking action on the Asarco stacks.

C. Asarco, East Helena Stack Height Demonstration

EPA received a stack height review from Montana with a letter dated November 25, 1985, and a subsequent submittal dated January 28, 1986. With regard to the Asarco stack heights, the State found that no existing emission limitations were affected by stack height credits above GEP or any other dispersion technique prohibited by EPA regulations.

EPA has determined that Montana's inventory of the Asarco facility at East Helena is complete and has carefully reviewed the State's findings. EPA concurs with those findings, which are summarized in the table below. A detailed discussion of the Asarco stack height analysis can be found in the TSD for this action.

Stack I.D.	Actual stack height (m)	Applicable GEP formula	GEP height (m)
Sinter	128	Grand-fathered (1939).	.....
Blast Furnace.	130	de minimis ...	65
Zinc Furnace	107	(*)	(*)

*Source is shut down. New permit will be required to reopen zinc plant.

IV. Final Action

EPA is approving the East Helena primary SO_2 NAAQS SIP submitted to EPA on March 30, 1994. Among other things, the State of Montana has demonstrated that the East Helena SO_2 nonattainment area will attain the primary SO_2 NAAQS by November 15, 1995. EPA is also approving stack height demonstrations for the Asarco, East Helena, primary lead smelter.

Because EPA considers this action noncontroversial and anticipates no adverse comments, this final approval is made without prior proposal. This action will be effective March 28, 1995. However, if adverse comments are received by February 27, 1995, then EPA would withdraw this final approval action and this notice would instead stand as a proposed rule. EPA would then address the comments in a subsequent final promulgation notice.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

The OMB has exempted this regulatory action from review under Executive Order 12866.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities

include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and Subchapter I, Part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on a substantial number of small entities affected. Moreover, due to the nature of the Federal-state relationship under the Clean Air Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*,427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410 (a)(2).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 28, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Act, section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental Protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: December 14, 1994.

William P. Yellowtail,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart BB—Montana

2. Section 52.1370 is amended by adding paragraph (c)(37) to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(c) * * *

(37) The Governor of Montana submitted a SIP revision meeting the requirements for the primary SO_2 NAAQS State Implementation Plan (SIP) for the East Helena, Montana nonattainment area with a letter dated March 30, 1994. The submittal was to satisfy those SO_2 nonattainment area SIP requirements due for East Helena on May 15, 1992.

(i) Incorporation by reference.

(A) Stipulation signed March 15, 1994, between the Montana Department of Health and Environmental Sciences (MDHES) and Asarco, Incorporated, which specifies SO_2 emission limitations and requirements for the company's primary lead smelter located in East Helena, MT.

(B) Board order issued on March 18, 1994, by the Montana Board of Health and Environmental Sciences approving and adopting the control strategy for achieving and maintaining the primary SO_2 NAAQS in the East Helena area.

[FR Doc. 95–2017 Filed 1–26–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[IL105–1–6841a; FRL–5139–5]

Approval and Promulgation of Implementation Plans for Ozone; Illinois

AGENCY: U. S. Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: The U.S. Environmental Protection Agency (USEPA) approves the State Implementation Plan (SIP) revision request submitted by the State of Illinois on October 25, 1994, for the purpose of requiring the installation of pressure/vacuum (P/V) relief valves on storage tank vent pipes at certain gasoline dispensing operations in the Chicago and Metro-East St. Louis (Metro-East) ozone nonattainment areas. The rationale for the approval is set forth in this final rule; additional information is available at the address indicated. In the proposed rules section of this **Federal Register**, USEPA is proposing approval of and soliciting public comment on this requested SIP revision. If adverse comments are received on this direct final rule, USEPA will withdraw this direct final rule and address the comments received in a subsequent final rule on the related proposed rule which is being published in the proposed rules section of this **Federal Register**. No additional opportunity for public comment will be provided. Unless this direct final rule is withdrawn no further rulemaking will occur on this requested SIP revision.

DATES: This final rule is effective March 28, 1995 unless notice is received by February 27, 1995 that someone wishes to submit adverse comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the USEPA's technical analysis are available for inspection at the following address: (It is recommended that you telephone Francisco Acevedo at (312) 886–6061 before visiting the Region 5 Office.)

U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Written comments can be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section (AR–18J), Regulation Development Branch, Air and Radiation Division, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of the Pressure/Vacuum SIP revision is available for inspection at: Office of Air and Radiation (OAR), Docket and Information Center (Air Docket 6102), room 1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Francisco Acevedo (312) 886–6061.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(b)(1) of the Act requires all moderate and above ozone nonattainment areas to achieve a 15 percent reduction of 1990 emissions of volatile organic material by 1996. In Illinois, the Chicago and the Metro-East areas are classified as ''Severe'' and ''Moderate'' nonattainment for ozone, respectively, and as such subject to the 15 percent Rate of Progress (ROP) requirement.

The Illinois Environmental Protection Agency (IEPA) developed and submitted a plan to USEPA on November 15, 1993 outlining the VOC emission control measures which will be implemented in order to satisfy the 15 percent ROP requirements. On January 21, 1994, USEPA found the Illinois Plan incomplete because it did not contain all the necessary components necessary for approval. On November 22, 1994, IEPA resubmitted the 15 percent ROP plan and USEPA is currently reviewing the plan. One of the measures identified for both the Chicago and Metro-East plans is the introduction of storage tank breathing controls for gasoline dispensing facilities. The Chicago ozone

nonattainment area includes Cook, DuPage, Grundy (only Aux Sable and Goose Lake Townships), Kane, Kendall (Oswego Township only), Lake McHenry, and Will Counties. The Metro-East ozone nonattainment area includes Madison, Monroe, and St. Clair Counties. On April 22, 1994, IEPA filed the proposed P/V relief valves rule with the Illinois Pollution Control Board (Board). A public hearing on the rules was held on June 17, 1994, in Chicago, Illinois, and on September 5, 1994, the Board adopted a Final Opinion and Order for the proposed amendments. The rules became effective on September 21, 1994 and they were published in the Illinois State register on October 7, 1994. The IEPA formally submitted the Pressure/Vacuum Relief Valve rules to USEPA on October 25, 1994, as a revision to the Illinois SIP for ozone.

II. Stage I/II Requirements

In 1975, the USEPA issued regulatory guidance to assist states in preparing regulations for the control of volatile organic material in ozone nonattainment areas. As a result, gasoline dispensing operations located in the Illinois nonattainment areas were required to be equipped with Stage I vapor recovery systems. The Stage I controls collect gasoline vapor losses generated during bulk gasoline delivery. These Stage I rules did not, however, include any requirement for the control of storage tank breathing loss.

The Clean Air Act Amendments of 1990 further required certain ozone nonattainment areas to implement Stage II vapor recovery. Accordingly, Stage II vapor recovery rules for the Chicago ozone nonattainment area were promulgated in 1992. The Stage II system collects gasoline vapors being expelled from vehicles during refueling. These Stage II systems are highly effective and work in conjunction with the Stage I controls. As with Stage I, Stage II rules did not directly require the control of storage tank breathing losses.

Even with the Stage I and Stage II controls, volatile organic mass (VOM) (gasoline vapor) emissions still occur as vapors are lost (pushed out) through the underground storage tank vent pipe. The vent pipe emissions result from the breathing losses which are caused by vapor and liquid expansion and contraction due to diurnal changes in temperature, barometric pressure and gasoline evaporation.

IEPA's regulations are intended to increase the effectiveness of Stage I and II controls as well as control the gasoline vapor losses being expelled through the vent pipe as stated above. The control of these emissions will be to require that all open vent pipes at gasoline dispensing facilities with a storage tank capacity of at least 575 gallons be equipped with low pressure/vacuum (P/V) relief valves.

III. Analysis of Rule

The P/V rule amends 35 Ill. Adm. Code Part 201 Subpart K, Part 211 Subpart B, Part 218 Subpart Y, and Part 219 Subpart Y. The P/V relief valve rule requires gasoline dispensing facilities located in the Chicago and Metro-East ozone nonattainment areas with a storage tank capacity of at least 575 gallons to install a P/V relief valve on each gasoline storage tank vent by March 15, 1995. However, tanks installed before January 1, 1979, are exempt from the rule if they have a capacity of less than 2000 gallons, as are tanks that are equipped with floating roofs or equivalent control devices that have been approved by the State and USEPA. The P/V relief valve must be capable of resisting a pressure of at least 3.5 inches water column and a vacuum of at least 6 inches water column. If a facility is subject to the Stage II vapor recovery rules, the P/V relief valve used must comply with its California Air Resources Board (CARB) certification. The P/V rule also requires the owner or operator to register the installation of the P/V relief valve, to maintain records of malfunctions, maintenance, and repair and to annually test for proper system pressure/vacuum. IEPA currently employs an annual inspection program for Stage I and II regulated facilities. The storage tank breathing control program will be incorporated into the existing inspection program. The State currently has the authority to administer and enforce the control program once the rules become effective.

The Illinois Environmental Protection Act (Illinois Act), section 42(a), states that any person that violates any provision of the Illinois Act or any regulation adopted by the Board, or any permit or term or condition thereof, or that violates any determination or order of the Board pursuant to the Illinois Act, shall be liable to a civil penalty not to exceed $50,000 for the violation and an additional $10,000 for each day for which the violation continues. In that this submittal is a regulation adopted by the Board, a violation of which subjects the violator to penalties under section 42(a), the submittal contains sufficient enforcement penalties for approval.

IV. Final Rulemaking Action

The USEPA approves the SIP revision submitted by the State of Illinois. The State of Illinois has submitted a SIP revision that includes an enforceable state regulation which is consistent with Federal requirements. The SIP also includes a commitment from the State to perform enforcement inspections on the regulated stations. Substantial penalties that will provide an adequate incentive for the regulated industry to comply and are no less than the expected cost of compliance are included in current Pollution Control Board Regulation. USEPA is, therefore, approving this submittal.

V. Procedural Background

Because USEPA considers this action noncontroversial and routine, we are approving it without prior proposal. The action will become effective on March 28, 1995. However, if the USEPA receives adverse comments by February 27, 1995, then the USEPA will publish a document that withdraws the action, and will address the comments received in response to this direct final rule in the final rule on the requested SIP revision which has been proposed for approval in the proposed rules section of this **Federal Register**. The comment period will not be extended or reopened.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for revision to any State Implementation Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal state relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 28, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbon, Incorporation by reference, Ozone.

Dated: December 29, 1994.

Valdas V. Adamkus,

Regional Administrator.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(107) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(107) On October 25, 1994, Illinois submitted a regulation which requires gasoline dispensing operations in the Chicago and Metro-East St. Louis ozone nonattainment areas that have storage tanks of at least 575 gallons to install pressure/vacuum relief valves on storage tank vent pipes. Tanks installed before January 1, 1979, are exempt from the rule if they have a capacity of less than 2000 gallons, as are tanks that are equipped with floating roofs or equivalent control devices that have been approved by the State and USEPA.

(i) Incorporation by reference. Illinois Administrative Code Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board, Subchapter c: Emissions Standards and Limitations for Stationary Sources.

(A) Part 201 Permits and General Provisions, Section 201.302 Reports. Amended at 18 Ill. Reg. 15002. Effective September 21, 1994.

(B) Part 211 Definitions and General Provisions, Section 211.5060 Pressure/Vacuum Relief Valve. Added at 18 Ill. Reg. 14962. Effective September 21, 1994.

(C) Part 218 Organic Material Emission Standards and Limitations for Chicago Area, Section 218.583 Gasoline Dispensing Operations–Storage Tank Filling Operations. Amended at 18 Ill. Reg. 14973. Effective September 21, 1994.

(D) Part 219 Organic Material Emission Standards and Limitations for Metro East Area, Section 219.583 Gasoline Dispensing Operations–Storage Tank Filling Operations. Amended at 18 Ill. Reg. 14987. Effective September 21, 1994.

[FR Doc. 95–2015 Filed 1–26–95; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 63

[AD–FRL–5147–1]

RIN 2060–AC19

National Emission Standards for Hazardous Air Pollutants for Source Categories; Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks; Extension of Compliance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; extension of compliance.

SUMMARY: On October 24 and 28, 1994, EPA announced a partial 3-month stay and reconsideration of certain aspects of the ''National Emission Standards for Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks'' 59 FR 19402 (April 22, 1994) and 59 FR 29196 (June 6, 1994) (collectively known as the ''hazardous organics NESHAP'' or the ''HON''). The EPA also proposed, pursuant to Clean Air Act section 301(a)(1), 42 U.S.C. 7601(a)(1), to extend temporarily the applicable compliance dates for sources subject to the stay, but only as necessary to complete the two reconsiderations (including appropriate regulatory action) of the rule in question. The EPA received no adverse public comment on either of the two proposed short-term compliance extensions. The EPA is extending the compliance dates until April 24, 1995. A short-term extension of this nature is well within the 3-year period allowed by the Act.

EFFECTIVE DATE: January 27, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. Janet S. Meyer, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5254.

SUPPLEMENTARY INFORMATION:

I. Compliance Extension

On October 24, 1995 (59 FR 53359) EPA announced that, pursuant to Clean Air Act section 307(d)(7)(B), it is reconsidering certain portions of the HON rule. The October 24, 1995 administrative stay applied only to those source owners or operators who make a representation in writing that resolution of the area source definition issues could affect whether the facility is subject to the HON. Readers should refer to that notice for a complete discussion of the background and rule affected.

On October 28, 1995 (59 FR 54131), EPA announced an administrative stay of the effectiveness of the provisions for compressors and for surge control vessels and bottoms receivers for sources subject to the October 24, 1994 compliance date pending reconsideration of those provisions. Readers should refer to that notice and the associated proposed amendments to subpart H (59 FR 54154) for a complete discussion of the background and the proposed changes to the rule.

Along with both notices of partial stay and reconsideration, EPA also proposed to extend the compliance dates beyond the 3 months provided, as necessary to complete reconsideration and revision of the rule in question.

Ten comment letters were received on each of the two notices of partial stay and reconsideration. No adverse

comments were received on either proposal to extend the compliance dates beyond 3 months, if necessary, in order to complete reconsideration and revision of the rules in question. As EPA finds that it is not able to complete the reconsideration and the regulatory action to the rule within the 3 month period, EPA is extending the compliance date until April 24, 1995. The EPA expects to complete the regulatory action on both petitions for reconsideration before the April compliance date.

II. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the actions taken by this final rule is available only on the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this action. Under section 307(b)(2) of the CAA, the requirements that are subject to today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small business entities.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances.

Dated: January 23, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 63 of Chapter I of title 40 of the Code of Federal Regulations is amended as follows.

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

2. Section 63.100 is amended by revising paragraphs (n) and (o) to read as follows:

§ 63.100 Applicability and designation of source.

* * * * *

(n) *Rules Stayed for Reconsideration.* Notwithstanding any other provision of this subpart, the effectiveness of subpart F is stayed from October 24, 1994, to April 24, 1995 only as applied to those sources for which the owner or operator makes a representation in writing to the Administrator that the resolution of the area source definition issues could have an effect on the compliance status of the source with respect to subpart F.

(o) *Sections Stayed for Reconsideration.* Notwithstanding any other provision of this subpart, the effectiveness of §§ 63.164 and 63.170 of subpart H is stayed from October 28, 1994 to April 24, 1995 only as applied to those sources subject to § 63.100(k)(3)(i) and (ii).

3. Section 63.110 is amended by revising paragraph (g) to read as follows:

§ 63.110 Applicability.

* * * * *

(g) *Rules Stayed for Reconsideration.* Notwithstanding any other provision of this subpart, the effectiveness of subpart G is stayed from October 24, 1994, to April 24, 1995 only as applied to those sources for which the owner or operator makes a representation in writing to the Administrator that the resolution of the area source definition issues could have an effect on the compliance status of the source with respect to subpart G.

4. Section 63.160 is amended by revising paragraph (d) to read as follows:

§ 63.160 Applicability and designation of source.

* * * * *

(d) *Rules Stayed for Reconsideration.* Notwithstanding any other provision of this subpart, the effectiveness of subpart H is stayed from October 24, 1994, to April 24, 1995 only as applied to those sources for which the owner or operator makes a representation in writing to the Administrator that the resolution of the area source definition issues could have an effect on the compliance status of the source with respect to subpart H.

5. Section 63.190 is amended by revising paragraphs (h) and (i) to read as follows:

§ 63.190 Applicability and designation of source.

* * * * *

(h) *Rules Stayed for Reconsideration.* Notwithstanding any other provision of this subpart, the effectiveness of subpart I is stayed from October 24, 1994, to April 24, 1995 only as applied to those sources for which the owner or operator makes a representation in writing to the Administrator that the resolution of the area source definition issues could have an effect on the compliance status of the source with respect to subpart I.

(i) *Sections Stayed for Reconsideration.* Notwithstanding any other provision of this subpart, the effectiveness of §§ 63.164 and 63.170 of subpart H is stayed from October 28, 1994 to April 24, 1995 only as applied to those sources subject to § 63.190(e)(2).

[FR Doc. 95–2129 Filed 1–24–95; 4:13 pm]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7113

[CA–940–1430–01; CACA 16951]

Withdrawal of Public Land for the Dog Town Historic Mining Site; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 110 acres of public land from mining for a period of 50 years for the Bureau of Land Management to protect the Dog Town Historic Mining Site. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: January 27, 1995.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office, 2800 Cottage Way, Sacramento, California 95825, 916–978–4820.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect the Bureau of Land Management's Dog Town Historic Mining Site:

Mount Diablo Meridian

T. 4 N., R. 25 E.,
Sec. 26, W½SW¼SW¼;
Sec. 27, E½SE¼NE¼SE¼, and SE¼SE¼;
Sec. 34, N½NE¼NE¼, and
E½SE¼NE¼NE¼;
Sec. 35, W½NW¼NW¼.

The area described contains 110 acres in Mono County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date

pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: January 13, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–2026 Filed 1–26–95; 8:45 am]

BILLING CODE 4310–40–P

FEDERAL MARITIME COMMISSION

46 CFR Part 501

The Federal Maritime Commission; General Transfer of Office of Information Resources Management

AGENCY: Federal Maritime Commission.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the Commission's final rule which was published December 5, 1994 (59 FR 62329). The rule related to the transfer of Office of Information Resources Management functions from the Bureau of Administration to the Office of the Managing Director.

EFFECTIVE DATE: January 27, 1995.

FOR FURTHER INFORMATION CONTACT: Edward P. Walsh, Managing Director, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573, (202) 523–5800.

SUPPLEMENTARY INFORMATION: The final rule which is the subject of this correction, *inter alia,* restated certain responsibilities of the Bureau of Administration by revising the introductory text of 46 CFR 501.5(k). This revision inadvertently omitted the last three sentences of the existing text which were intended to be unchanged.

Accordingly, in FR Doc. 94–29741, published December 5, 1994, on page 62330, first column, the introductory text of § 501.5(k) is corrected to read as follows:

§ 501.5 Functions of the organizational components of the Federal Maritime Commission.

* * * * *

(k) Under the direction and management of the Bureau Director, the Bureau of Administration is responsible for the administration and coordination of the Offices of: Administrative Services; Budget and Financial Management; and Personnel. The Bureau provides administrative support to the program operations of the Commission. The Bureau interprets governmental policies and programs and administers these is a manner consistent with Federal guidelines, including those involving procurement, financial management and personnel. The Bureau initiates recommendations, collaborating with other elements of the Commission as warranted, for long-range plans, new or revised policies and standards, and rules and regulations, with respect to its program activities. The Office of the Bureau Director is responsible for directing and administering the Commission's training and development function. The Bureau Director is the Commission's Competition Advocate under 41 U.S.C. 418(a) and Commission Order No. 112, as well as the Commission's representative, as Principal Management Official, to the Small Agency Council. Other Bureau programs are carried out by its Offices, as follows:

* * * * *

Joseph C. Polking,

Secretary.

[FR Doc. 95–2042 Filed 1–26–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, 25, 43, 64, and 73

[FCC 94–252]

Reorganization Establishing the International Bureau

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This order amends various parts of the Federal Communications Commission's regulations to reflect the creation of a new International Bureau, and the abolition of the old Office of International Communications. Some of the changes affect the internal structure of the Commission; others affect the delegation of authority from the Commission to the International Bureau and other bureaus and offices; and others affect procedures for practice before the Commission.

EFFECTIVE DATE: October 19, 1994.

FOR FURTHER INFORMATION CONTACT: James L. Ball, (202) 418–0420.

SUPPLEMENTARY INFORMATION:

Order

Adopted: September 27, 1994
Released: October 19, 1994

By the Commission:

1. The Commission has before it for consideration a set of proposed rule changes creating a new International Bureau. The proposed changes affect the Office of International Communications, Mass Media Bureau, Common Carrier Bureau, Field Operations Bureau, Private Radio Bureau, and Office of Engineering and Technology. Implementation of the proposed changes requires amendment of Parts 0, 1, 25, 43, 64, and 73 of Title 47 of the Code of Federal Regulations.

2. In order to create an effective organization in which to centralize and consolidate the Commission's international policies and activities, the Commission has determined to establish the new International Bureau. The amendments adopted in this Order reflect the creation of the new bureau, describe its functions, and set forth the extent and nature of the authority delegated by the Commission to the Chief of the International Bureau.

3. The amendments adopted herein pertain to agency organization. The prior notice procedure and effective date provisions of section 553 of the Administrative Procedure Act are therefore inapplicable. Authority for the amendments adopted herein is contained in section 4(i), 5(b), 5(c)(1), and 303(r) of the Communications Act of 1934, as amended

4. It is hereby ordered, effective upon release of this Order, the Parts 0, 1, 25, 43, 64, and 73 of the Commission's rules and regulations, set forth in Title 47 of the Code of Federal Regulations, be amended as set forth below.

List of Subjects

47 CFR Part 0

Organization and functions.

47 CFR Part 1

Administrative practice and procedure, Communications common carriers, Radio, Reporting and recordkeeping requirements, Telecommunications.

47 CFR Part 25

Radio, Satellites.

47 CFR Part 43

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

47 CFR Part 64

Communications common carriers, Foreign relations, Reporting and recordkeeping requirements, Telephone.

47 CFR Part 73

Radio broadcasting, Television broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Final Rules

Parts 0, 1, 25, 43, 64, and 73 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 0—COMMISSION ORGANIZATION

1. Section 0.5 is amended by revising paragraph (a)(13) to read as follows:

§ 0.5 General description of Commission organization and operations.

(a) * * *

(13) International Bureau.

* * * * *

§ 0.11 [Amended]

2. Section 0.11 is amended by removing paragraph (a)(11).

§ 0.21 [Amended]

3. Section 0.21 is amended by removing the words ''domestic'' and ''interagency'' from paragraph (h), removing paragraph (i), and redesignating existing paragraph (j) as new paragraph (i).

4. Section 0.31 is amended by removing the last six words of paragraph (f) and revising paragraph (b) to read as follows:

§ 0.31 Functions of the Office.

* * * * *

(b) Represent the Commission at various national conferences and meetings (and, in consultation with the International Bureau, at various international conferences and meetings) devoted to the progress of communications and the development of technical and other information and standards, and serve as Commission coordinator for the various national conferences when appropriate.

* * * * *

5. Section 0.41 is amended by removing paragraph (c); redesignating existing paragraphs (d) through (p) as new paragraphs (c) through (o), respectively; and revising newly redesignated paragraph (i) to read as follows:

§ 0.41 Functions of the Office.

* * * * *

(i) To cooperate with the International Bureau on all matters pertaining to space satellite communications.

* * * * *

6. The heading ''Office of International Communications,'' which appears immediately before § 0.51, is revised to read as follows:

''International Bureau.''

7. Section 0.51 is revised to read as follows:

§ 0.51 Functions of the Bureau.

The International Bureau has the following duties and responsibilities:

(a) To initiate and direct the development and articulation of international telecommunications policies, consistent with the priorities of the Commission;

(b) To advise the Chairman and Commissioners on matters of international telecommunications policy, and on the adequacy of the Commission's actions to promote the vital interests of the American public in international commerce, national defense, and foreign policy;

(c) To develop, recommend, and administer policies, rules, standards, and procedures for the authorization and regulation of international telecommunications facilities and services, domestic and international satellite systems, and international broadcast services;

(d) To monitor compliance with the terms and conditions of authorizations and licenses granted by the Bureau, and to pursue enforcement actions in conjunction with appropriate bureaus and offices;

(e) To represent the Commission on international telecommunications matters at both domestic and international conferences and meetings, and to direct and coordinate the Commission's preparation for such conferences and meetings;

(f) To serve as the single focal point within the Commission for cooperation and consultation on international telecommunications matters with other federal agencies, international or foreign organizations, and appropriate regulatory bodies and officials of foreign governments;

(g) To develop, coordinate with other federal agencies, and administer the regulatory assistance and training programs for foreign administrations to promote telecommunications development;

(h) To provide advice and technical assistance to U.S. trade officials in the negotiation and implementation of telecommunications trade agreements, and consult with other bureaus and offices as appropriate;

(i) To conduct economic, legal, technical, statistical, and other appropriate studies, surveys, and analyses in support of international telecommunications policies and programs.

(j) To collect and disseminate within the Commission information and data on international telecommunications policies, regulatory and market developments in other countries, and international organizations;

(k) To work with the Office of Legislative Affairs to coordinate the Commission's activities on significant matters of international policy with appropriate Congressional offices;

(l) To promote the international coordination of spectrum allocations and frequency and orbital assignments so as to minimize cases of international radio interference involving U.S. licensees;

(m) To direct and coordinate, in consultation with other bureaus and offices as appropriate, negotiation of international agreements to provide for arrangements and procedures for coordination of radio frequency assignments to prevent or resolve international radio interference involving U.S. licensees;

(n) To ensure fulfillment of the Commission's responsibilities under international agreements and treaty obligations, and, consistent with Commission policy, to ensure that the Commission's regulations, procedures, and frequency allocations comply with the mandatory requirements of all applicable international and bilateral agreements;

(o) To oversee and, as appropriate, administer activities pertaining to the international consultation, coordination, and notification of U.S. frequency and orbital assignments, including activities required by bilateral agreements, the international Radio Regulations, and other international agreements;

(p) To advise the Chairman on priorities for international travel and develop, coordinate, and administer the international travel plan; and

(q) To develop, recommend, and administer policies; rules, and regulations implementing the Commission's oversight responsibilities regarding COMSAT's participation in INTELSAT and INMARSAT.

§ 0.61 [Amended]

8. Section 0.61 is amended by removing paragraph (b) and redesignating paragraphs (c) through (h) as new paragraphs (b) through (g), respectively.

9. Section 0.91 is amended by revising the first two sentences of introductory text to read as follows:

§ 0.91 Functions of the Bureau.

The Common Carrier Bureau develops, recommends, and administers policies and programs for the regulation

of services, facilities, and practices of entities (excluding public coast stations in the maritime mobile service and multi-point and multi-channel multi-point distribution services) which furnish interstate communications service or interstate access service for hire—whether by wire, terrestrial radio, or cable—and of ancillary operations related to the provision or use of such services. The Bureau also develops, recommends, and administers policies and programs for the regulation of the rates, terms, and conditions under which communications entities furnish interstate communications service, interstate access service, and (in cooperation with the International Bureau) foreign communications service for hire—whether by wire, terrestrial radio, cable, or satellite. * * *

* * * * *

10. Section 0.91 is further amended by removing existing paragraphs (b), (d), and (k); redesignating existing paragraph (c) as new paragraph (b); redesignating existing paragraphs (e) through (j) as new paragraphs (c) through (h), respectively; redesignating existing paragraphs (l) through (n) as new paragraphs (i) through (k), respectively; and revising newly redesignated paragraph (i) to read as follows:

§ 0.91 Functions of the Bureau.

* * * * *

(i) Acts on matters affecting public coast stations in the maritime service which concern tariffs, terms of interconnection, and rate or economic analysis.

* * * * *

11. Section 0.111 is amended by revising paragraph (e) to read as follows:

§ 0.111 Functions of the Bureau.

* * * * *

(e) Participate in international conferences dealing with monitoring and measurements; serve, in consultation with the International Bureau, as the point of contact for the United States government in matters of international monitoring, fixed and mobile direction finding, and interference elimination.

* * * * *

12. Section 0.131 is amended by removing paragraph (b) and redesignating existing paragraphs (c) through (k) as new paragraphs (b) through (j), respectively.

§ 0.241 [Amended]

13. Section 0.241 is amended by removing paragraph (a)(6) and redesignating existing paragraphs (a)(7) through (a)(9) as new paragraphs (a)(6) through (a)(8), respectively.

14. A new center heading and a new section 0.261 is added to Subpart B to read as follows:

International Bureau

§ 0.261 Authority delegated.

(a) Subject to the limitations set forth in paragraph (b) of this section, the Chief, International Bureau, is hereby delegated the authority to perform the functions and activities described in § 0.51, including without limitation the following:

(1) To recommend rulemakings, studies, and analyses (legal, engineering, social, and economic) of various petitions for policy or rule changes submitted by industry or the public, and to assist the Commission in conducting the same;

(2) To assume the principal representational role on behalf of the Commission in international conferences, meetings, and negotiations, and direct Commission preparation for such conferences, meetings, and negotiations with other bureaus and offices, as appropriate;

(3) To act upon applications for international telecommunications facilities and services pursuant to part 23 of this chapter and relevant portions of part 63 of this chapter, and coordinate with the Common Carrier Bureau as appropriate;

(4) To act upon applications for international and domestic satellite systems and earth stations pursuant to part 25 of this chapter;

(5) To act upon applications for cable landing licenses pursuant to § 1.767 of this chapter;

(6) To act upon requests for designation of Recognized Private Operating Agency (RPOA) status under part 63 of this chapter;

(7) To act upon applications relating to international broadcast station operations, or for permission to deliver programming to foreign stations, under part 73 of this chapter;

(8) To administer and enforce the policies and rules on international settlements under part 64 of this chapter;

(9) To administer portions of part 2 of this chapter dealing with international treaties and call sign provisions, and to make call sign assignments, individually and in blocks, to U.S. Government agencies and FCC operating bureaus;

(10) To act upon applications for closure of public coast stations in the maritime service under part 63 of this chapter;

(11) To administer Commission participation in the International Telecommunication Union (ITU) Fellowship telecommunication training program for foreign officials offered through the U.S. Telecommunications Training Institute;

(12) In consultation with the affected Bureaus and Offices, to recommend revision of Commission rules and procedures as appropriate to conform to the outcomes of international conferences, agreements, or treaties;

(13) To notify the ITU of the United States' terrestrial and satellite assignments for inclusion in the Master International Frequency Register;

(14) To conduct studies and compile such data relating to international telecommunications as may be necessary for the Commission to develop and maintain an adequate regulatory program; and

(15) To interpret and enforce rules and regulations pertaining to matters under its jurisdiction.

(b) Notwithstanding the authority delegated in paragraph (a) of this section, the Chief, International Bureau, shall not have authority:

(1) To act on any application, petition, pleading, complaint, enforcement matter, or other request that:

(i) Presents new or novel arguments not previously considered by the Commission;

(ii) Presents facts or arguments which appear to justify a change in Commission policy; or

(iii) Cannot be resolved under outstanding precedents and guidelines after consultation with appropriate Bureaus or Offices.

(2) To issue notices of proposed rulemaking, notices of inquiry, or reports or orders arising from rulemaking or inquiry proceedings;

(3) To act upon any application for review of actions taken by the Chief, International Bureau, pursuant to delegated authority, which application complies with § 1.115 of this chapter;

(4) To act upon any formal or informal radio application or section 214 application for common carrier services which is in hearing status;

(5) To designate for hearing any applications except:

(i) Mutually exclusive applications for radio facilities filed pursuant to part 23, 25, or 73 of this chapter; and

(ii) Applications for facilities where the issues presented relate solely to whether the applicant has complied with outstanding precedents and guidelines; or

(6) To impose, reduce, or cancel forfeitures pursuant to section 203 or section 503(b) of the Communications Act of 1934, as amended, in amounts of more than $20,000.

15. A new section 0.262 is added to Subpart B to read as follows:

§ 0.262 Record of actions taken.

The application and authorization files in the appropriate central files of the International Bureau are designated as the Commission's official records of actions by the Chief, International Bureau, pursuant to authority delegated to him.

16. Section 0.291 is amended by removing paragraph (d), redesignating existing paragraphs (e) through (i) as new paragraphs (d) through (h), respectively; and revising newly redesignated paragraphs (d), (g), and (h) to read as follows:

§ 0.291 Authority delegated.

* * * * *

(d) Authority to designate for hearing. The Chief, Common Carrier Bureau,

shall not have authority to designate for hearing any formal complaints which present novel questions of fact, law, or policy which cannot be resolved under outstanding precedents or guidelines. The Chief, Common Carrier Bureau, shall not have authority to designate for hearing any applications except:

(1) Applications for radio facilities filed pursuant to parts 21 or 22 of this chapter which are mutually exclusive and

(2) Applications for facilities where the issues presented relate solely to whether the applicant has complied with outstanding precedents and guidelines.

* * * * *

(g) Authority concerning rulemaking and investigatory proceedings. The Chief, Common Carrier Bureau, shall not have authority to issue notices of proposed rulemaking, notices of inquiry, or reports or orders arising from either of the foregoing, except that the Chief, Common Carrier Bureau, shall have authority, in consultation and coordination with the Chief, International Bureau, to issue and revise a manual on the details of the reporting requirements for international carriers set forth in § 43.61(d) of this chapter.

(h) Authority concerning public coast stations in the maritime service. The Chief, Common Carrier Bureau, shall have authority to act on matters affecting public coast stations in the maritime service which concern tariffs and rates and terms of interconnection.

17. Section 0.332 is amended by removing paragraph (b), redesignating existing paragraphs (c) through (i) as new paragraphs (b) through (h) respectively; and revising newly redesignated paragraph (f) to read as follows:

§ 0.332 Actions taken under delegated authority.

* * * * *

(f) Requests involving coordination with other Federal or state agencies when appropriate—Office of General Counsel, Office of Engineering and Technology or operating bureau.

* * * * *

18. Section 0.401 is amended by revising paragraph (b)(1) to read as follows:

§ 0.401 Location of Commission offices.

* * * * *

(b) * * *

(1) Applications and filings submitted by mail shall be addressed to the Mellon Bank in Pittsburgh, Pennsylvania. The bank maintains separate post office boxes for the receipt of different types of applications. It will also establish special post office boxes to receive responses to special filings such as applications filed in response to ''filing windows'' established by the Commission. The address for the submission of filings will be established in the Public Notice announcing the filing dates. In all other cases, applications and filings submitted by mail should be sent to the addresses listed in the appropriate fee rules in subpart G of part 1 of this chapter (§§ 1.102 through 1.1107 of this chapter).

* * * * *

§ 0.401 [Amended]

19. Section 0.401 is further amended by removing the parenthetical ''(§§ 1.1102–1.1105)'' from paragraph (b)(2) and adding in its place the following: ''(§§ 1.1102–1.1107).''

20. Section 0.453 is amended by removing paragraph (d)(1); redesignating existing paragraphs (d)(2) and (d)(3) as new paragraphs (d)(1) and (d)(2), respectively; removing paragraph (g)(3); and revising paragraph (g)(2) and adding a new paragraph (m) to read as follows:

§ 0.453 Public reference rooms.

* * * * *

(g) * * *

(2) Section 214 applications and related files, to the extent that they concern domestic communications facilities and services.

* * * * *

(m) The International Bureau Reference Room. Except to the extent they are excluded from routine public inspection under another section of this chapter, the following documents, files, and records are available for inspection at this location:

(1) Satellite and earth station application files and related materials under part 25 of this chapter;

(2) Section 214 applications and related files under part 63 of this chapter, to the extent that they concern international communications facilities and services;

(3) International Fixed Public Radio applications and related files under part 23 of this chapter;

(4) Files relating to submarine cable landing licenses and applications for such licenses since June 30, 1934, except for maps showing the exact location of submarine cables, which are withheld from inspection under section 4(j) of the Communications Act (see §§ 0.457(c)(1)(i));

(5) Files relating to international settlements under part 64 of this chapter;

(6) Documents relating to INTELSAT or INMARSAT;

(7) International broadcast applications, applications for permission to deliver programming to foreign stations, and related files under part 73 of this chapter; and

(8) International settlement agreements and contracts and international cable agreements.

21. Section 0.455 is amended by removing paragraph (b)(14); redesignating existing paragraphs (b)(15) and (b)(16) as new paragraphs (b)(14) and (b)(15), respectively; and revising paragraph (b)(12) and adding a new paragraph (g) to read as follows:

§ 0.455 Other locations at which records may be inspected.

* * * * *

(b) * * *

(12) All applications for common carrier authorizations acted upon by the Common Carrier Bureau, and files relating thereto.

* * * * *

(g) International Bureau. The treaties and other international and bilateral agreements listed in § 73.1650 of this chapter are available for inspection in the office of the Chief, Planning and Negotiations Division, International Bureau.

PART 1—PRACTICE AND PROCEDURE

§ 1.1104 [Amended]

22. Section 1.1104 is amended by removing entry 8 and redesignating existing entry 9 as new entry 8.

23. Section 1.1105 is amended by removing entries 10 through 19; redesignating existing entries 20 through 22 as new entries 10 through 12; and revising entry 9 to read as follows:

§ 1.1105 Schedule of charges for common carrier services.

Action	FCC form No.	Fee amount	Fee type code	Address
*	*	*	*	* * *
9. Section 214 Applications:				

Action	FCC form No.	Fee amount	Fee type code	Address
a. Domestic Cable Construction.	Corr. and 159 .	$705	CUT	Federal Communications Commission, Common Carrier Dom. Services, P.O. Box 358145, Pittsburgh, PA 15251–5145.
b. All Other Domestic 214 Applications.	Corr. and 159 .	705	CUT	Federal Communications Commission, Common Carrier Dom. Services, P.O. Box 358145, Pittsburgh, PA 15251–5145.
c. Special Temporary Authority (all domestic services).	Corr. and 159 .	705	CUT	Federal Communications Commissions, Common Carrier Dom. Services, P.O. Box 358145, Pittsburgh, PA 15251–5145.
d. Assignments or Transfers (all domestic services).	Corr. and 159 .	705	CUT	Federal Communications Commission, Common Carrier Dom. Services, P.O. Box 358145, Pittsburgh, PA 15251–5145.
*	*	*	*	* * *

§§ 1.1107–1.1118 [Redesignated as §§ 1.1108–1.1119]

24. Sections 1.1107 through 1.1118 are redesignated as sections 1.1108 through 1.1119.

25. A new § 1.1107 is added to Subpart G to read as follows:

§ 1.1107 Schedule of charges for international and satellite services.

Action	FCC form No.	Fee amount	Fee type code	Address
1. International Broadcast Stations:				
a. New Station and Facilities Change CP.	309	$1,960	MSN	Federal Communications Commission, Planning and Negotiations Div'n, P.O. Box 358200, Pittsburgh, PA 15251–5200.
b. License	310	445	MNN	Federal Communications Commission, Planning and Negotiations Div'n, P.O. Box 358200, Pittsburgh, PA 15251–5200.
c. Assignment or Transfer (per station).	314, 315, 316	70	MCN	Federal Communications Commission, Planning and Negotiations Div'n, P.O. Box 358200, Pittsburgh, PA 15251–5200.
d. Renewal	311	110	MFN	Federal Communications Commission, Planning and Negotiations Div'n, P.O. Box 358200, Pittsburgh, PA 15251–5200.
e. Frequency Assignment and Coordination (per frequency hour).	N/A	45	MAN	Federal Communications Commission, Planning and Negotiations Div'n, P.O. Box 358175, Pittsburgh, PA 15251–5175.
f. Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent).	N/A	115	MGN	Federal Communications Commission, Planning and Negotiations Div'n, P.O. Box 358175, Pittsburgh, PA 15251–5175.
2. International Fixed Public Radio (Public and Control Stations):				
a. Initial Construction Authorization (per station).	407 and 159	590	CSN	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358115, Pittsburgh, PA 15251–5115.
b. Assignment or Transfer (per application).	702 or 704	590	CSN	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358115, Pittsburgh, PA 15251–5115.
c. Renewal (per license)	405	425	CON	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358115, Pittsburgh, PA 15251–5115.
d. Modification (per station)	403	425	CON	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358115, Pittsburgh, PA 15251–5115.
e. Extension of Construction Authorization (per station).	701	215	CKN	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358115, Pittsburgh, PA 15251–5115.
f. Special Temporary Authority or Request for Waiver (per request).	Corr. and 159	215	CKN	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358115, Pittsburgh, PA 15251–5115.
3. Fixed Satellite Transmit/Receive Earth Stations:				
a. Initial Application (per application):				
(i) Domestic	493 and 159	1,755	BAX	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	493 and 159	1,755	BAX	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358115, Pittsburgh, PA 15251–5115.

Action	FCC form No.	Fee amount	Fee type code	Address
b. Modification of License (per station):				
(i) Domestic	493 and 159	125	CGX	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	493 and 159	125	CGX	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358115, Pittsburgh, PA 15251–5115.
c. Assignment or Transfer:				
(i) First station on application:				
(a) Domestic	702 or 704	345	CNX	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(b) International	702 or 704	345	CNX	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358115, Pittsburgh, PA 15251–5115.
(ii) Each additional station:				
(a) Domestic	702 or 704	115	CFX	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(b) International	702 or 704	115	CFX	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358115, Pittsburgh, PA 15251–5115.
d. Developmental Station (per station):				
(i) Domestic	493 and 159	1,150	CWX	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	493 and 159	1,150	CWX	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358115, Pittsburgh, PA 15251–5115.
e. Renewal of License (per station):				
(i) Domestic	405	125	CGX	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	405	125	CGX	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358115, Pittsburgh, PA 15251–5115.
f. Special Temporary Authority or Waivers of Prior Construction Authorization (per request):				
(i) Domestic	Corr. and 159	125	CGX	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	Corr. and 159	125	CGS	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358115, Pittsburgh, PA 15251–5115.
g. Amendment of Application (per request):				
(i) Domestic	Corr. and 159	125	CGX	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA l5251–5160.
(ii) International	Corr. and 159	125	CGX	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358115, Pittsburgh, PA 15251–5115.
h. Extension of Construction Permit (per station):				
(i) Domestic	701	125	CGX	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	701	125	CGX	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358115, Pittsburgh, PA 15251–5115.
4. Fixed Satellite Small Transmit/Receive Earth Stations (2 meters or less and operating in the 4/6 GHz frequency band):				

Action	FCC form No.	Fee amount	Fee type code	Address
a. Lead Application	493 and 159	3,885	BDS	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
b. Routine application (per station).	493 and 159	45	CAS	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
c. Modification of License (per station).	493 and 159	125	CGS	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
d. Assignment or Transfer:				
(i) First station on application.	702 and 704	345	CNS	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) Each additional station.	702 or 704	45	CAS	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
e. Developmental Station (per station).	493 and 159	1,150	CWS	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
f. Renewal of License (per station).	405	125	CGS	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
g. Special Temporary Authority or Waivers of Prior Construction Authorization (per request).	Corr. and 159	125	CGS	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
h. Amendment of Application (per station).	Corr. and 159	125	CGS	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
i. Extension of Construction Permit (per station).	701	125	CGS	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
5. Receive Only Earth Stations:				
a. Initial Application for Registration:				
(i) Domestic	493 and 159	265	CMO	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	493 and 159	265	CMO	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358115, Pittsburgh, PA 15251–5115.
b. Modification of License or Registration (per station):				
(i) Domestic	493 and 159	125	CGO	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	493 and 159	125	CGO	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358115, Pittsburgh, PA 15251–5115.
c. Assignment or Transfer:				
(i) First station on application:				
(a) Domestic	702 or 704	345	CNO	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(b) International ...	702 or 704	345	CNO	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358115, Pittsburgh, PA 15251–5115.
(ii) Each additional station:				
(a) Domestic	702 or 704	115	CFO	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(b) International ...	702 or 704	115	CFO	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358115, Pittsburgh, PA 15251–5115.
d. Renewal of License (per station):				
(i) Domestic	405	125	CGO	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.

Action	FCC form No.	Fee amount	Fee type code	Address
(ii) International	405	125	CGO	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358115, Pittsburgh, PA 15251–5115.
e. Amendment of Application (per station):				
(i) Domestic	Corr. and 159	125	CGO	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	Corr. and 159	125	CGO	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358115, Pittsburgh, PA 15251–5115.
f. Extension of Construction Permit (per station):				
(i) Domestic	701	125	CGO	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	701	125	CGO	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358115, Pittsburgh, PA 15251–5115.
g. Waivers (per request):				
(i) Domestic	Corr. and 159	125	CGO	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	Corr. and 159	125	CGO	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358115, Pittsburgh, PA 15251–5115.
6. Fixed Satellite Very Small Aperture Terminal (VSAT) Systems:				
a. Initial Application (per system).	493 and 159	6,465	BGV	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
b. Modification of License (per system).	493 and 159	125	CGV	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
c. Assignment or Transfer of System.	702 or 704	1,730	CZU	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
d. Developmental Station ...	493 and 159	1,150	CWV	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
e. Renewal of License	405	125	CGV	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
f. Special Temporary Authority or Waivers of Prior Construction Authorization (per request).	Corr. and 159	125	CGV	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
g. Amendment of Application (per system).	Corr. and 159	125	CGV	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
h. Extension of Construction Permit (per system).	701	125	CGV	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
7. Mobile Satellite Earth Stations:				
a. Initial Application of Blanket Authorization.	493 and 159	6,465	BGB	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
b. Initial Application for Individual Earth Station.	493 and 159	1,550	CYB	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
c. Modification of License (per system).	493 and 159	125	CGB	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
d. Assignment or Transfer (per system).	702 or 704	1,730	CZB	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
e. Developmental Station ...	493 and 195	1,150	CWB	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.

Action	FCC form No.	Fee amount	Fee type code	Address
f. Renewal of License (per system).	405	125	CGB	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
g. Special Temporary Authority or Waivers of Prior Construction Authorization (per request).	Corr. and 159	125	CGB	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
h. Amendment of Application (per system).	Corr. and 159	125	CGB	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
i. Extension of Construction Permit (per system).	701	125	CGB	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
8. Radio Determination Satellite Earth Station:				
a. Initial Application of Blanket Authorization.	493 and 159	6,465	BGH	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
b. Initial Application for Individual Earth Station.	493 and 159	1,550	CYH	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
c. Modification of License (per system).	493 and 159	125	CGH	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
d. Assignment or Transfer (per system).	702 or 704	1,730	CZH	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
e. Developmental Station ...	493 and 159	1,150	CWH	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
f. Renewal of License (per system).	405	125	CGH	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
g. Special Temporary Authority or Waivers of Prior Construction Authorization (per request).	Corr. and 159	125	CGH	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
h. Amendment of Application (per system).	Corr. and 159	125	CGH	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
i. Extension of Construction Permit (per system).	701	125	CGH	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
9. Space Stations:				
a. Application for Authority to Construct:				
(i) Domestic	Corr. and 159	2,330	BBY	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	Corr. and 159	2,330	BBY	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358115, Pittsburgh, PA 15251–5115.
b. Application for Authority to Launch and Operate:				
(i) Initial application:				
(a) Domestic	Corr. and 159	80,360	BNY	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(b) International ...	Corr. and 159	80,360	BNY	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358115, Pittsburgh, PA 15251–5115.
(ii) Replacement satellite:				
(a) Domestic	Corr. and 159	80,360	BNY	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(b) International ...	Corr. and 159	80,360	BNY	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358115, Pittsburgh, PA 15251–5115.

Action	FCC form No.	Fee amount	Fee type code	Address
c. Assignment or Transfer (per satellite):				
(i) Domestic	702 or 704	5,740	BFY	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	702 or 704	5,740	BFY	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358115, Pittsburgh, PA 15251–5115.
d. Modification (per request):				
(i) Domestic	Corr. and 159	5,740	BFY	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	Corr. and 159	5,740	BFY	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358115, Pittsburgh, PA 15251–5115.
e. Special Temporary Authority or Waiver of Prior Construction Authorization (per request):				
(i) Domestic	Corr. and 159	575	CRY	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	Corr. and 159	575	CRY	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358115, Pittsburgh, PA 15251–5115.
f. Amendment of Application:				
(i) Domestic	Corr. and 159	1,150	CWY	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	Corr. and 159	1,150	CWY	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358115, Pittsburgh, PA 15251–5115.
g. Extension of Construction Permit/Launch Authorization (per request):				
(i) Domestic	Corr. and 159	575	CRY	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	Corr. and 159	575	CRY	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358115, Pittsburgh, PA 15251–5115.
10. Space Stations (Low Orbit):				
a. Application for Authority to Construct:				
(i) Domestic	Corr. and 159	6,890	CZW	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	Corr. and 159	6,890	CZW	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358115, Pittsburgh, PA 15251–5115.
b. Application for Authority to Launch and Operate:				
(i) Domestic	Corr. and 159	241,080	CLW	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	Corr. and 159	241,080	CLW	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358115, Pittsburgh, PA 15251–5115.
c. Assignment or Transfer (per satellite):				
(i) Domestic	702 or 704	6,890	CZW	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	702 or 704	6,890	CZW	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358115, Pittsburgh, PA 15251–5115.
d. Modification (per request):				
(i) Domestic	Corr. and 159	17,220	CGW	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.

Action	FCC form No.	Fee amount	Fee type code	Address
(ii) International	Corr. and 159	17,220	CGW	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358115, Pittsburgh, PA 15251–5115.
e. Special Temporary Authority or Waiver of Prior Construction Authorization (per request):				
(i) Domestic	Corr. and 159	1,725	CXW	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	Corr. and 159	1,725	CXW	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358115, Pittsburgh, PA 15251–5115.
f. Amendment of Application:				
(i) Domestic	Corr. and 159	3,445	CAW	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	Corr. and 159	3,445	CAW	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358115, Pittsburgh, PA 15251–5115.
g. Extension of Construction Permit/Launch Authorization (per request):				
(i) Domestic	Corr. and 159	1,725	CXW	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	Corr. and 159	1,725	CXW	Federal Communications Commission, Satellite and Radiocommunication Div'n, P.O. Box 358115, Pittsburgh, PA 15251–5115.
11. Section 214 Cable Construction:				
a. Overseas Cable Construction.	Corr. and 159	10,480	BIT	Federal Communications Commission, IB Telecommunications Div'n, P.O. Box 358115, Pittsburgh, PA 15251–5115.
b. Cable Landing License:				
(i) Common carrier	Corr. and 159	1,180	CXT	Federal Communications Commission, IB Telecommunications Div'n, P.O. Box 358115, Pittsburgh, PA 15251–5115.
(ii) Replacement satellite.	Corr. and 159	11,655	BJT	Federal Communications Commission, IB Telecommunications Div'n, P.O. Box 358115, Pittsburgh, PA 15251–5115.
c. All Other International Applications Under Section 214.	Corr. and 159	705	CUT	Federal Communications Commission, IB Telecommunications Div'n, P.O. Box 358115, Pittsburgh, PA 15251–5115.
d. Special Temporary Authority (all international services).	Corr. and 159	705	CUT	Federal Communications Commission, IB Telecommunications Div'n, P.O. Box 358115, Pittsburgh, PA 15251–5115.
e. Assignments or Transfers (all international services).	Corr. and 159	705	CUT	Federal Communications Commission, IB Telecommunications Div'n, P.O. Box 358115, Pittsburgh, PA 15251–5115.
12. Recognized Private Operating Status (per application).	Corr. and 159	705	CUT	Federal Communications Commission, IB Telecommunications Div'n, P.O. Box 358115, Pittsburgh, PA 15251–5115.

§ 1.1153 [Amended]

26. Section 1.1153 is amended by removing ''International (HF) Broadcast'' from the list of services and deleting the corresponding fee and address information from the table appearing in that section.

27.Section 1.1154 is revised to read as follows:

§ 1.1154 Schedule of annual regulatory changes and filing locations for common carrier services.

Services	Fee amount	Address
Radio Facilities:		
1. Cellular Radio (per 1,000 subscribers)	$60	FCC, Cellular, P.O. Box 358835, Pittsburgh, PA 15251–5835.
2. Personal Communications	60	FCC, Cellular, P.O. Box 358835, Pittsburgh, PA 15251–5835.
3. Public Mobile (per 1,000 subscribers)	60	FCC, Cellular, P.O. Box 358835, Pittsburgh, PA 15251–5835.
4. Domestic Public Fixed	55	FCC, Cellular, P.O. Box 358835, Pittsburgh, PA 15251–5835.
Carriers:		
1. Inter-Exchange Carrier (per 1,000 presubscribed lines) .	60	FCC, Carriers, P.O. Box 358835, Pittsburgh, PA 15251–5835.
2. Local Exchange Carrier (per 1,000 access lines)	60	FCC, Carriers, P.O. Box 358835, Pittsburgh, PA 15251–5835.
3. Competitive Access Provider (per 1,000 subscribers)	60	FCC, Carriers, P.O. Box 358835, Pittsburgh, PA 15251–5835.

§§ 1.1156–1.1166 [Redesignated as §§ 1.1158–1.1168]

28. Sections 1.1156 through 1.1166 are redesignated as new sections 1.1158 through 1.1168.

29. A new § 1.1156 is added to subpart G, to read as follows:

§ 1.1156 Schedule of regulatory fees and filing locations for international and satellite services.

Services	Fee amount	Address
Radio Facilities:		
1. Space Stations (geo-stationary orbit).	$65,000	FCC, Satellite and Radiocommunication Div'n, P.O. Box 358835, Pittsburgh, PA 15251–5835.
2. Space Stations (low earth orbit).	90,000	FCC, Satellite and Radiocommunication Div'n, P.O. Box 358835, Pittsburgh, PA 15251–5835.
3. International Public Fixed	110	FCC, Satellite and Radiocommunication Div'n, P.O. Box 358835, Pittsburgh, PA 15251–5835.
Earth Stations:		
1. VSAT and Equivalent C-Band antennas (per 100 antennas).	6	FCC, Satellite and Radiocommunication Div'n, P.O. Box 358835, Pittsburgh, PA 15251–5835.
2. Mobile Satellite Earth Stations (per 100 antennas).	6	FCC, Satellite and Radiocommunication Div'n, P.O. Box 358835, Pittsburgh, PA 15251–5835.
3. Less than Nine Meters (per 100 antennas).	6	FCC, Satellite and Radiocommunication Div'n, P.O. Box 358835, Pittsburgh, PA 15251–5835.
4. Nine Meters or More:.		
a. Transmit/Receive and Transmit Only (per meter).	85	FCC, Satellite and Radiocommunication Div'n, P.O. Box 358835, Pittsburgh, PA 15251–5835.
b. Receive Only (per meter).	55	FCC, Satellite and Radiocommunication Div'n, P.O. Box 358835, Pittsburgh, PA 15251–5835.
Carriers:		
1. International Circuits (per 100 active 64 KB circuits or equivalent).	220	FCC, IB Telecommunications Div'n, P.O. Box 358835, Pittsburgh, PA 15251–5835.
International (HF) Broadcast	200	FCC, Planning and Negotiations Div'n, P.O. Box 358835, Pittsburgh, PA 15251–5835.

§ 1.1157 [Reserved]

30. Section 1.1157 is reserved.

PART 25—SATELLITE COMMUNICATIONS

31. Section 25.110 is amended by revising paragraph (b) to read as follows:

§ 25.110 Filing of applications, fees, and number of copies.

* * * * *

(b) Applications for satellite radio station authorizations governed by this part and requiring a fee shall be mailed or hand-delivered to the location specified in part 1, subpart G of this chapter. All other applications shall be submitted to the Secretary, 1919 M Street NW, Washington, DC 20554, and addressed to the attention of Chief, Satellite and Spectrum Management Division.

* * * * *

PART 43—REPORTS OF COMMUNICATION COMMON CARRIERS AND CERTAIN AFFILIATES

32. Section 43.61 is amended by revising paragraph (d) to read as follows:

§ 43.61 Reports of international telecommunications traffic.

* * * * *

(d) The information required under this section shall be furnished in conformance with the instructions and reporting requirements prepared under the direction of the Chief, Common Carrier Bureau, prepared and published as a manual, in consultation and coordination with the Chief, International Bureau.

§ 43.81 [Amended]

33. Section 43.81 is amended by removing the words ''Common Carrier Bureau'' from paragraph (b) and inserting in their place the words ''International Bureau''.

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

34. Section 64.1001 is amended by removing the words ''Common Carrier Bureau'' from paragraph (l)(2), and replacing them with the words ''International Bureau''.

PART 73—RADIO BROADCAST SERVICES

35. Section 73.1650 is amended by revising the second-to-last sentence to read as follows:

§ 73.1650 International agreements.

* * * * *

* * * The documents listed in this paragraph are available for inspection in the office of the Chief, Planning and Negotiations Division, International Bureau, FCC, Washington, D.C. * * *

[FR Doc. 95–2065 Filed 1–26–95; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 24

[PP Docket No. 93–253; DA 95–19]

Implementation of Section 309(j) of the Communications Act—Competitive Bidding

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final regulations, which were published December 7, 1994 (59 FR 63210). The regulations related to the broadband PCS auction rules.

EFFECTIVE DATE: February 6, 1995.

FOR FURTHER INFORMATION CONTACT: Sue McNeil (202) 418–0620.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections set forth rules which are designed to ensure that small businesses, rural telephone companies and businesses owned by

minorities and women have the opportunity to compete for and obtain licenses for broadband personal communications services (broadband PCS) and to attract the investment capital needed to have meaningful involvement in building and managing this nation's broadband PCS infrastructure.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication on December 7, 1994 of the final regulations, which were the subject of PP Docket No. 93–253, is corrected as follows:

1. Paragraph 64 of the text on page 63221, col. 1 is corrected to read as follows:

64. Specifically, we will retain the 25 percent minimum equity requirement for the control group, but we will require only 15 percent (*i.e.*, 60 percent of the control group's 25 percent equity holdings) to be held by qualifying, controlling principals in the control group (*i.e.*, minorities, women or small/entrepreneurial business principals).[35] For example, if the applicant seeks minority or women-owned status, the 15 percent equity, as well as 50.1 percent of the voting stock of the control group and all of its general partnership interests, must be owned by control group members who are minorities and/or women. If the applicant seeks small business status, 15 percent of the equity, as well as 50.1 percent of the control group's voting stock and all of its general partnership interests, must be held by control group members who, in the aggregate, qualify as a small business.[35a] With regard to establishing control of the applicant by qualified investors, where the control group is composed of both qualifying and nonqualifying members, the qualifying members in the control group must have 50.1 percent of the voting stock and all general partnership interests within the control group, and maintain *de facto* control of the control group. The control group, in turn, must hold 50.1 percent of the voting stock and all general partnership interests of the PCS applicant. Thus, qualifying members of the control group will have *de jure* and *de facto* control of both the control group and, indirectly, the applicant. The composition of the principals of the control group and their legal and active control of the applicant determines whether the applicant qualifies for bidding credits, installment payments and reduced upfront payments. The 15 percent minimum equity amount may be held in the form of options, provided these options are exercisable at any time, solely at the holder's discretion, and at an exercise price equal to or less than the current market valuation of the underlying shares at the time of short-form filing. The remaining 10 percent (*i.e.*, 40 percent of the control group's minimum equity holdings) may be held in the form of either stock options or shares, and we will allow certain investors that are not minorities, women, small businesses, or entrepreneurs to hold interests in such shares or options. Specifically, we will allow the 10 percent portion to be held in the form of shares or options by qualifying investors or by any of the following entities which may not comply with the entrepreneurs' block requirements (*e.g.* investors who are not minorities or women or investors, and/or their affiliates, that exceed the entrepreneurs' block or small business size thresholds): (1) individuals who are members of an applicant's management team; (2) existing investors of businesses in the control group that were operating and earning revenues for two years prior to December 31, 1994; or (3) noncontrolling institutional investors.[35b]

2. Paragraph 65 of the text on page 63221, col. 2 is corrected to read as follows:

65. As discussed *supra* at paragraph 59, the Commission also adopted an alternative to the 25 percent minimum equity requirement for minority and women-owned businesses, which permits a single investor to hold as much as 49.9 percent of its equity, provided the control group holds at least 50.1 percent. Several petitioners have expressed similar concerns with respect to the need to revise the 50.1 percent requirement.[35c] Therefore, in tandem with, and for the same reasons as, the modifications to the 25 percent equity requirement, we make similar modifications to the rules governing the 50.1 percent minimum equity requirement. Accordingly, where a minority or women-owned business uses the 50.1 percent minimum equity option, we will require only 30 percent of the total equity to be held by the principals of the control group that are minorities or women. The 30 percent may be held in the form of options, provided these options are exercisable at any time, solely at the holder's discretion, and at an exercise price equal to or less than the current market valuation of the underlying shares at the time of short-form filing. The remaining 20.1 percent may be made up of shares and/or options held by investors that are not women or minorities under similar criteria described in paragraph 64 above. That is, the 20.1 percent portion of the control group's equity may be held in the form of shares or stock options by qualifying investors or by any of the following entities which may not comply with the entrepreneurs' block requirements (*e.g.* investors who are not minorities or women or investors, and/or their affiliates, that exceed the entrepreneurs' block or small business size thresholds): (1) individuals who are members of an applicant's management team; (2) existing investors of businesses in the control group that were operating and earning revenues for two years prior to December 31, 1994; or (3) noncontrolling institutional investors.[36]

[35] *See* Media Communications Partners *ex parte* comments, filed Oct. 11, 1994, at 7–8.

[35a] For instance, if a pre-existing company wants to qualify as a small business control group, its gross revenues and total assets will be added to the gross revenues and assets of each of its controlling shareholders and to those of all affiliates. The resulting sum must be under $40 million in gross revenues and $500 million in total assets. The gross revenues and total assets of the company's pre-existing, noncontrolling shareholders will be ignored, however.

[35b] *See* note 162 *infra* (explaining definition of institutional investors).

[35c] *See, e.g.*, BET Petition at 16; Columbia PCS Petition at 2–3; Omnipoint Petition at 9.

[36] For our purposes, we define institutional investors in a manner that is similar to the definition that is used by the Commission in the attribution rules applied to assess compliance with the broadcast multiple ownership rules. We modify that definition slightly, however, to fit this service. Specifically, we expect that investment companies will be important sources of capital formation for designated entities. Accordingly, we adopt a definition that specifically includes venture capital firms and other smaller investment companies that may not be included in the definition of investment companies found in 15 U.S.C. 80a–3 (which is cited in our broadcast rules at 47 CFR Sec. 73.3555 Note 2(c)). Specifically, we define an *institutional investor* as an insurance company, a bank holding stock in trust accounts through its trust department, or an investment company as defined under 15 U.S.C. 80a–3(a). We include in the definition any entity that would otherwise meet the definition of investment company under 15 U.S.C. 80a–3(a), but is excluded by the exemptions set forth in 15 U.S.C. 80A–3(b) and (c) and we do so without regard to whether the entity is an issue of securities. However, if the investment company is owned, in whole or in part, by other entities, the investment company, other entities and *affiliates* of other entities, taken as a whole, must be primarily engaged in the business of investing, reinvesting or trading in securities or in distributing or providing investment management services for securities, *See* Section 24.720(h).

§ 24.709 [Corrected]

3. Section 24.709(b)(5)(i) (B) and (C) on page 63233, col. 2 are corrected to read as follows:

* * * * *

(b) * * *

(5) * * *

(i) * * *

(B) Such *qualifying investors* must hold 50.1 percent of the voting stock and all general partnership interests within the control group, and must have *de facto* control of the control group and of the applicant;

(C) The remaining 10 percent of the applicant's (or licensee's) total equity may be owned by *qualifying investors*, either unconditionally or in the form of stock options not subject to the restrictions of paragraph (b)(5)(i)(A) of this section, or by any of the following entities, which may not comply with § 24.720(n)(1):

(*1*) *Institutional investors*, either unconditionally or in the form of stock options;

(*2*) Noncontrolling *existing investors* in any *preexisting entity* that is a member of the *control group*, either unconditionally or in the form of stock options; or

(*3*) Individuals that are members of the applicant's (or licenses's) management, either unconditionally or in the form of stock options.

* * * * *

§ 24.709 [Corrected]

4. Section 24. 709(b)(6)(i) (B) and (C), on page 63233, col. 3 are corrected to read as follows:

* * * * *

(b) * * *

(6) * * *

(i) * * *

(B) Such *qualifying minority and/or women investors* must hold 50.1 percent of the voting stock and all general partnership interests within the control group and must have *de facto* control of the control group and of the applicant;

(C) The remaining 20.1 percent of the applicant's (or licensee's) total equity may be owned by *qualifying investors*, either unconditionally or in the form of stock options not subject to the restrictions of paragraph (b)(5)(i)(A) of this section, or by any of the following entities, which may not comply with § 24.720(n)(1):

(*1*) *Institutional investors*, either unconditionally or in the form of stock options;

(*2*) Noncontrolling *existing investors* in any *preexisting entity* that is a member of the *control group*, either unconditionally or in the form of stock options; or

(*3*) Individuals that are members of the applicant's (or licensee's) management, either unconditionally or in the form of stock options.

* * * * *

§ 24.711 [Corrected]

5. Sections 24.711(b)(1) and 24.711(b)(2), on page 63235, col. 2 are corrected to read as follows:

* * * * *

(b) * * *

(1) For an eligible licensee with *gross revenues* exceeding $75 million (calculated in accordance with § 24.709 (a)(2) and (b)) in each of the two preceding years (calculated in accordance with § 24.720(f)), interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted, plus 3.5 percent; payments shall include both principal and interest amortized over the term of the license.

(2) For an eligible licensee with *gross revenues* not exceeding $75 million (calculated in accordance with § 24.709 (a)(2) and (b)) in each of the two preceding years, interest shall be imposed based on the rate of ten-year U.S. Treasury obligations applicable on the date the license is granted, plus 2.5 percent; payments shall include interest only for the first year and payments of interest and principal amortized over the remaining nine years of the license term.

* * * * * *

§ 24.712 [Corrected]

6. Sections 24.712(d)(1) and 24.712(d)(2), on page 63235. col. 3, and page 63236, col. 1, are corrected to read as follows:

* * * * * *

(d) * * *

(1) If during the term of the initial license grant (*see* § 24.15), a licensee that utilize a bidding credit under this section seeks to assign or transfer control of its license to an entity not meeting the eligibility standards for bidding credits or seeks to make any other change in ownership that would result in the licensee no longer qualifying for bidding credits under this section, the licensee must seek Commission approval and reimburse the government for the amount of the bidding credit as a condition of the approval of such assignment, transfer or other ownership change.

(2) If during the term of the initial license grant (*see* § 24.15), a licensee that utilizes a bidding credit under this section seeks to assign or transfer control of its license to an entity meeting the eligibility standards for lower bidding credits or seeks to make any other change in ownership that would result in the licensee qualifying for a lower bidding credit under this section, the licensee must seek Commission approval and reimburse the government for the difference between the amount of the bidding credit obtained by the licensee and the bidding credit for which the assignee, transferee or licensee is eligible under this section as a condition of the approval of such assignment, transfer or other ownership change.

§ 24.720 [Corrected]

7. Section 24.720 (f) and (h), on page 63236, col. 2 and col. 3, are corrected to read as follows:

* * * * *

(f) *Gross Revenues. Gross revenues* shall mean all income received by an entity, whether earned or passive, before any deductions are made for costs of doing business (*e.g.* cost of goods sold), as evidenced by audited financial statements for the relevant number of calendar years preceding January 1, 1994, or, if audited, financial statements were not prepared on a calendar-year basis, for the most recently completed fiscal years preceding the filing of the applicant's short-form application (Form 175). For short-form applications filed after December 31, 1995, gross revenues shall be evidenced by audited financial statements for the preceding relevant number of calendar or fiscal years. If an entity was not in existence for all or part of the relevant period, gross revenues shall be evidenced by the audited financial statements of the entity's predecessor-in-interest or, if there is no identifiable predecessor-in-interest, unaudited financial statements certified by the applicant as accurate.

* * * * *

(h) *Institutional Investor.* An *institutional investor* is an insurance company, a bank holding stock in trust accounts through its trust department, or an investment company as defined in 15 U.S.C. 80a–3(a), including within such definition any entity that would otherwise meet the definition of investment company under 15 U.S.C. 80a–3(a) but is excluded by the exemptions set forth in 15 U.S.C. 80a–3 (b) and (c), without regard to whether such entity is an issuer of securities; provided that, if such investment company is owned, in whole or in part, by other entities, such investment company, such other entities and the *affiliates* of such other entities, taken as a whole, must be primarily engaged in the business of investing, reinvesting or trading in securities or in distributing or

providing investment management services for securities.

* * * * *

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–1948 Filed 1–26–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 90–01; Notice 5]

RIN 2127–AF32

Federal Motor Vehicle Safety Standards; School Bus Pedestrian Safety Devices

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This notice adopts as final the amendments made by an interim final rule to the flash rate requirement for stop signal arm lamps in Standard No. 131, School Bus Pedestrian Safety Devices. The interim final rule, which responded to a petition for rulemaking submitted by Blue Bird Bus Company, removed design restrictive language that had the effect of prohibiting strobe lamps on stop signal arms.

DATES: *Effective Date:* January 27, 1995.

Petitions for reconsideration: Any petition for reconsideration of this rule must be received by the agency not later than February 27, 1995.

ADDRESSES: Petitions for reconsideration should refer to Docket No. 90–01; Notice 5 and be submitted to the following: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Hott, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202) 366–0247.

SUPPLEMENTARY INFORMATION:

I. Background

Federal motor vehicle safety standard (FMVSS) No. 131, School Bus Pedestrian Safety Devices, requires each new school bus to be equipped with a stop signal arm. A stop signal arm is an item of school bus equipment designed to alert motorists that a school bus is stopping or has stopped. The stop signal arm is patterned after a conventional ''STOP'' sign and attached to the exterior of the driver's side of a school bus. When the school bus stops, the stop signal arm automatically extends outward from the bus. The standard specifies requirements for the stop signal arm's appearance, size, conspicuity, operation and location. To enhance the conspicuity of a stop signal arm, Standard No. 131 specifies that the device must be either reflectorized or be illuminated with flashing lamps.

On February 22, 1994, Blue Bird Body Company (Blue Bird) petitioned the agency to amend the flash rate requirements in S6.2.2 of Standard No. 131 to allow the use of strobe lamps on stop signal arms. At the time, S6.2.2 stated:

> S6.2.2 *Flash Rate*. The lamps on each side of the stop signal arm, when operated at the manufacturer's design load, shall flash at a rate of 60 to 120 flashes per minute with a current ''on'' time of 30 to 75 percent. The total of the percent current ''on'' time for the two terminals shall be between 90 and 110.

Blue Bird argued that the requirement had the effect of prohibiting the use of strobe lamps. Citing previous agency notices, Blue Bird stated its belief that NHTSA had not intended, in issuing its stop signal arm requirements, to prohibit the use of strobe lamps on stop signal arms. For instance, it stated that, in the advance notice of proposed rulemaking (ANPRM), the agency had solicited comments about whether the agency should require strobe lamps.[1]

According to Blue Bird, its petition was precipitated by a letter that it received from NHTSA's Office of Vehicle Safety Compliance addressing an apparent non-compliance of school buses manufactured with stop signal arms equipped with strobe lamps. Blue Bird stated that the apparent non-compliance results from the fact that S6.2.2 sets forth restrictive design requirements based on the operating characteristics of incandescent lamps instead of more performance-oriented requirements based on visual effectiveness. The petitioner alleged that the requirement prevents the use of strobe lamps. Based on these allegations, Blue Bird stated that the apparent noncompliance results from a deficiency in the Standard and not a deficiency in its school buses. Blue Bird requested that the agency amend S6.2.2 to allow the use of strobe lamps, stating that this would be in the interests of safety and consistent with the Standard's intent.

Blue Bird also stated that four states (Alaska, New Mexico, Washington, and West Virginia) as well as some local school districts require stop signal arms to be equipped with strobe lamps. This consideration prompted Blue Bird to request that this rulemaking take effect immediately, claiming that the production and delivery of school buses with strobe lamp equipped stop signal arms needed to continue without disruption.

On May 24, 1994, NHTSA published an interim final rule that amended the flash rate requirements to remove design restrictive language that acted to prohibit strobe lamps (59 FR 26759). The agency explained that, in establishing the flash rate requirements, the agency intended to assure the conspicuity of stop signal arms and did not intend to prohibit manufacturers from installing strobe lamps on stop signal arms to provide such conspicuity. The requirements in effect prior to the interim final rule were based upon filament type lamps, which need an extended current-on-time of 90 to 110 percent of the total flash cycle for the two terminals. This time period is needed to allow this type of lamp to come to full brilliance. In contrast, strobe lamps come to full brilliance almost immediately and could not meet the current-on-time requirements for filament type lamps. The interim final rule resolved this problem by modifying the flash rate requirements to reflect changes made to the Society of Automotive Engineers (SAE's) Recommended Practice J1133, July 1989, School Bus Stop Arms, to allow the use of strobe lights on stop arms.

NHTSA received comments about the interim final rule from the National School Transportation Association (NSTA) and Specialty Manufacturing Company (Specialty) which manufactures stop signal arms. NSTA stated that the interim final rule should be made permanent.

Specialty also stated that the interim final rule should be made permanent, provided that the agency adopts an industry practice which treats a double flash strobe pattern to be a single flash cycle. It explained that both single and double flash strobe lamps are available, but that the secondary flash of a double strobe pattern will occur approximately 0.17 seconds after the initial flash. According to the commenter, the industry considers this double flash pattern to be a single flash since they occur in rapid succession.

NHTSA agrees with Specialty that multiple flash patterns that occur

[1] The agency notes that there was no ANPRM addressing stop signal arms. The discussion described by Blue Bird was contained in the NPRM (55 FR 3624, February 2, 1990).

rapidly should be considered to be a single flash. In a March 29, 1994 interpretation letter to the Connecticut Department of Motor Vehicles, NHTSA stated that the light emanating from a strobe lamp that flashes repeatedly in rapid succession will be considered a single flash of varying intensity and not as multiple flashes, when determining the flash rate and flash cycle for alternatively flashing lights required by Standard No. 108, Lamps, Reflective Devices, and Associated Equipment, for school buses. The agency believes that it is appropriate to apply the same principle to school bus stop arms equipped with multiple flash strobe lamps on stop arms. Accordingly, NHTSA considers strobe lamps on school bus stop arms that have multiple flashes of a single lamp and then remain off while the other lamp flashes to be a single flash cycle.

Based on the reasons set forth in the interim final rule and those set forth above, NHTSA has decided to adopt the amendments in the interim final rule on a permanent basis. NHTSA determined that there is good cause to establish an immediate effective date for the final rule to avoid disrupting compliance with the Standard as explained in the interim final rule.

Regulatory Analyses and Notices

A. Executive Order 12866 (Federal Regulation) and DOT Regulatory Policies and Procedures

This notice was not reviewed under E.O. 12866. NHTSA has analyzed this rulemaking and determined that it is not significant within the meaning of the Department of Transportation regulatory policies and procedures. The agency has determined that the economic effects of the amendment are so minimal that a full regulatory evaluation is not required. Since the amendment imposes no new requirement but simply allows for an alternative design, any cost impacts will be in the nature of slight, nonquantifiable cost savings.

B. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this rulemaking on small entities. Based on this evaluation, I hereby certify that the amendments will not have significant economic impact on a substantial number of small entities. Few of the school bus manufacturers qualify as small entities. In addition, manufacturers of motor vehicles, small businesses, small organizations, and small governmental units that purchase motor vehicles will not be significantly affected by the slight cost savings resulting from the amendments. Accordingly, a regulatory flexibility analysis has not been performed.

C. Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. NHTSA has determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Nevertheless, NHTSA notes that the laws of various local jurisdictions and four States (Alaska, New Mexico, Washington, and West Virginia) require stop signal arms to be equipped with strobe lamps and thus would have been preempted without this amendment.

D. Environmental Impacts

In accordance with the National Environmental Policy Act of 1969, NHTSA has considered the environmental impacts of this rule. The agency has determined that this rule will not have a significant effect on the quality of the human environment.

E. Civil Justice Reform

This final rule does not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

Accordingly, the interim rule amending 49 CFR part 571 which was published at 59 FR 26759 on May 24, 1994, is adopted as a final rule without change.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166, delegation of authority at 49 CFR 1.50.

Issued on: January 23, 1995.

Ricardo Martinez,

Administrator.

[FR Doc. 95–2117 Filed 1–26–95; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 941249–4349; I.D. 012095A]

Groundfish of the Gulf of Alaska; Inseason Action

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 62 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the interim 1995 initial specification for pollock in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), January 24, 1995, until 12 noon A.l.t., April 1, 1995, unless superseded by the final 1995 specifications in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Michael L. Sloan, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The interim specification of pollock total allowable catch in Statistical Area 62 was established by interim specifications (59 FR 65975, December 22, 1994) as 3,827 metric tons (mt), determined in accordance with § 672.20(c)(1)(ii)(A).

The Director, Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the 1995 interim specification of pollock in Statistical Area 62 soon will be reached. The Regional Director established a directed fishing allowance of 2,800 mt, and has set aside the remaining 1,027 mt as bycatch to support other anticipated groundfish fisheries. Because of the low directed fishing allowance and high interest in the fishery, there will be insufficient time to collect and analyze catch data and take appropriate action to ensure the directed fishing allowance is not exceeded. Therefore, based on the best available data, the Regional Director has determined that the pollock directed

fishing allowance in Statistical Area 62 will be reached by 12 noon A.l.t., January 24, 1995. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 62.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 23, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–2098 Filed 1–24–95; 4:31 pm]

BILLING CODE 3510–22–F

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50 CFR Part 672

[Docket No. 941249–4349; I.D. 012095B]

Groundfish of the Gulf of Alaska; Inseason Action

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 63 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the interim 1995 initial specification for pollock in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), January 24, 1995, until 12 noon A.l.t, April 1, 1995 unless superseded by the final 1995 specifications in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Michael L. Sloan, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The interim specification of pollock total allowable catch in Statistical Area 63 was established by interim specifications (59 FR 65975, December 22, 1994) as 4,078 metric tons (mt), determined in accordance with § 672.20(c)(1)(ii)(A).

The Director, Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the 1995 interim specification of pollock in Statistical Area 63 soon will be reached. The Regional Director established a directed fishing allowance of 3,000 mt, and has set aside the remaining 1,078 mt as bycatch to support other anticipated groundfish fisheries. Because of the low directed fishing allowance and high interest in the fishery, there will be insufficient time to collect and analyze catch data and take appropriate action to ensure the directed fishing allowance is not exceeded. Therefore, based on the best available data, the Regional Director has determined that the pollock directed fishing allowance in Statistical Area 63 will be reached by 12 noon A.l.t., January 24, 1995. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 63.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 23, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–2097 Filed 1–24–95; 4:31 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 18
Friday, January 27, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457
RIN 0563–AA96

Common Crop Insurance Regulations; Nursery Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby proposes specific crop provisions for the insurance of nursery to be contained in an endorsement to the Common Crop Insurance Policy which contains standard terms and conditions common to most crops. The intended effect of this action is to add a nursery frost, freeze, and cold damage exclusion option to better meet the needs of the insured.

DATES: Written comments, data, and opinions on this proposed rule must be submitted no later than February 27, 1995 to be sure of consideration.

ADDRESSES: Written comments, data, and opinion on this proposed rule should be sent to Diana Moslak, Regulatory and Procedural Development Staff, Federal Crop Insurance Corporation, USDA, Washington, D.C. 20250. Hand or messenger delivery should be made to 2101 L Street, N.W., suite 500, Washington, D.C. Written comments will be available for public inspection and copying in the Office of the Manager, 2101 L Street, N.W., 5th Floor, Washington, D.C., during regular business hours, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Diana Moslak, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250. Telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under United States Department of Agriculture (''USDA'') procedures established by Executive Order 12866 and Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is January 1, 2000.

This rule has been determined to be ''not significant'' for the purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget (''OMB'').

The information collection or record-keeping requirements contained in these regulations (7 CFR part 457) have been submitted to the OMB in accordance with the provisions of 44 U.S.C. § 35 and will be assigned an OMB control number.

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The policies and procedures contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Under the Regulatory Flexibility Act (5 U.S.C. § 605), this regulation will not have a significant impact on a substantial number of small entities. This action reduces the paperwork burden on the insured farmer and the reinsured company. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in subsections (2)(a) and 2(b)(2) of Executive Order 12778. The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions located at 7 CFR part 400, subpart J or promulgated by the National Appeals Division must be exhausted before judicial action may be brought.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC proposes to add to the Common Crop Insurance Regulations (7 CFR Part 457), two new sections to be known as 7 CFR 457.114, the Nursery Crop Insurance Provisions and 7 CFR 457.115, the Nursery Frost, Freeze, and Cold Damage Exclusion Option. The provisions and option will be effective for the 1996 and succeeding crop years.

The proposed Nursery Crop Insurance Provisions will replace the provisions found at 7 CFR part 406. By separate rule, FCIC will amend these regulations to restrict the crop years of application to those prior to the crop year for which this rule will be effective and later remove the nursery crop insurance regulations contained in 7 CFR part 406.

This rule makes minor editorial and format changes to improve its compatibility with the Common Crop Insurance Policy. In addition, FCIC is proposing other changes in the provisions for insuring nursery crops:

1. Subsection 1.(a)—Revises the definition of ''amount of insurance'' to allow a maximum amount of insurance based on the highest reported monthly market value of inventory plus any additional inventory added during the year, or which is restocked, if approved by the insurer. Presently, the maximum amount of insurance is based on 90 percent of the average monthly market value of inventory reported at the beginning of the crop year. The 10 percent reduced valuation in the current regulations is eliminated to recognize the abnormal expenses incurred in disposing of damaged inventory.

2. Subsection 1.(b)—Revises the definition of ''annual loss deductible'' by replacing the term ''field market value'' with the term ''highest reported monthly market value.''

3. Subsection 1.(e)—Revises the definition, ''field market value A'' to no longer contain the 10 percent reduced valuation contained in the current regulations due to the change stated in item 1. above. Language specifies that the insurer reserves the right to review the insured's wholesale price list taking into consideration maximum discounts

granted to any buyer as contained in the definition of ''wholesale market value.''

4. Subsection 1.(f)—Revises the definition, ''field market value B'' to no longer contain the 10 percent reduced valuation contained in the current regulations due to the change stated in item 1. above. Maximum pricing discounts will also be considered in this determination as specified in the definition of ''wholesale market value.''

5. Subsection 1.(h)—Add a definition for ''monthly loss deductible.''

6. Subsection 1.(i)—Add a definition for ''monthly market value.''

7. Subsection 1.(n)—Add a definition for ''standard nursery containers.''

8. Section 2—Clarify that locations outside a five mile radius of the named locations, but within the same county, may be designated as a separate basic unit or be included in the closest unit listed on the insured's nursery plant inventory summary.

9. Subsection 6.(c)—Clarify that whenever inventory is expected to change within a specific month, the highest value for the month will be recorded on the nursery plant inventory summary.

10. Subsection 6.(d)—Require the insured to give notice in writing at least 14 days before making a change in inventory value, if a request for a revised nursery plant inventory summary is planned. This provision allows the insurer to inspect the inventory if necessary.

11. Paragraphs 6.(d)(1) and 6.(d)(2)—Specify that insurance will not attach on any increase in inventory until the insurer completes an inspection and accepts such increase.

12. Subsection 6.(e)—Specify that any plants added to the inventory that are not reported for insurance will not be insured, but the value of these plants, after a loss, will be considered production to count for purposes of loss determination and claim settlement.

13. Subsection 7.(b)—Allow the insured to pay the annual premium in three installments. The first payment (40 percent of the annual premium) is due and payable on the later of September 30 preceding the crop year or the date the insurer accepts the inventory for insurance; the second payment (30 percent of the annual premium) is due and payable on January 1 of the crop year; and the third payment (30 percent of the annual premium) is due and payable on April 1 of the crop year. Current provisions state that the annual premium is earned and payable on or before September 30 preceding each crop year, but allow a six month delay in the payment of premiums, until March 31 of the crop year.

14. Subsection 7.(c)—Specify that additional premium resulting from an increase in a nursery plant inventory summary is due and payable when the revised summary is approved.

15. Subsection 7.(d)—Clarify that premium will not be reduced due to a decrease in plant inventory, unless such decrease results from deleting uninsurable inventory which was incorrectly reported.

16. Paragraph 8.(a)(1)—Require that the nursery plants be grown under an irrigated practice.

17. Paragraph 8.(a)(3)—Clarify that the insured nursery plant inventory will not include plants that produce edible berries, fruits, or nuts.

18. Paragraph 8.(a)(4)—Clarify that nursery plants grown in standard nursery containers less than three inches across at the smallest dimension are not insured unless the insurer enters into a written agreement to insure such plants.

19. Paragraph 8.(a)(6)—Allow plants not listed in the Nursery Eligible Plant Listing to be insurable if the insured submits a written request and the insurer agrees in writing to insure such plants.

20. Paragraph 8.(a)(7)—Clarify that stock plants will not be insured.

21. Section 9—Specify that insurance attaches on the later of October 1 or the date the insurer accepts the inventory for insurance, and in either case upon payment of 40 percent of the annual premium. This change allows the insurer to complete any necessary inspection before insurance attaches. This paragraph also states that when the nursery plant inventory summary is revised to add additional plant inventory, coverage for the additional inventory will not attach until the additional premium for that inventory is paid in full.

22. Subsection 9.(a)—Clarify that insurance coverage ends when inventory is sold or removed unless that inventory is replaced and additional premium is paid. Previous provisions did not permit insurance to attach to restocked inventory.

23. Paragraph 10.(a)(9)—Add as an insurable cause of loss, failure or breakdown of frost/freeze protection equipment or facilities provided: 1) such failure or breakdown is caused by a named insurable cause of loss, 2) the insured nursery plants are damaged by freezing temperatures within 72 hours of such failure or breakdown, and 3) the equipment or facilities could not be repaired or replaced between the time of failure or breakdown and the time the freezing temperatures occur.

24. Paragraph 10.(b)(1)—Clarify that brownout is not an insured cause of loss.

25. Paragraph 10.(b)(2)—Clarify that failure of the power supply is not an insured cause of loss, unless such failure is a direct result of an insured cause of loss.

26. Paragraph 10.(b)(5)—Clarify that collapse or failure of buildings or structures are not insured causes of loss unless due to an insured cause of loss.

27. Subsection 12(a)—Allow use of the highest reported monthly market value for the unit and the monthly loss deductible (not to exceed the remaining annual loss deductible) to calculate an indemnity. References to the 10 percent reduced valuation have been deleted. These changes were necessary due to the change in the definition of ''amount of insurance'' as stated in item 1. above.

28. Add a nursery frost, freeze, and cold damage exclusion option. This option excludes losses due to frost, freeze, and cold weather for plants that have specific over-wintering requirements when those over-wintering requirements will not be met.

List of Subjects in 7 CFR Part 457

Crop insurance, nursery crop.

Proposed Rule

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the Common Crop Insurance Regulations (7 CFR part 457), effective for the 1996 and succeeding crop years, to read as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1996 AND SUBSEQUENT CONTRACT YEARS

1. The authority citation for 7 CFR part 457 is revised to read as follows:

Authority: 7 U.S.C. 1506(1).

2. The heading for part 457 is revised as set forth above.

3. 7 CFR part 457 is amended by adding §§ 457.114 and 457.115 to read as follows:

§ 457.114 Nursery Crop Insurance Provisions.

The Nursery Crop Insurance Provisions for the 1996 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Nursery Crop Provisions

If a conflict exists among the Basic Provisions (§ 457.8), these crop provisions, and the Special Provisions, the Special Provisions will control these crop provisions and the Basic Provisions; and these crop provisions will control the Basic Provisions.

1. Definitions

(a) *Amount of insurance*—The result of multiplying the highest monthly market value reported on the nursery plant inventory summary (which will include inventory reported by you and accepted by us on a revised nursery plant inventory summary or restocked), multiplied by the percentage for the coverage level you elect.

(b) *Annual loss deductible*—The value calculated by subtracting the amount of insurance from the highest monthly market value reported on the nursery plant inventory summary. The annual loss deductible will be revised if an inventory addition is approved.

(c) *Brownout*—A cutback or reduction in electric power, as a result of a shortage.

(d) *Crop year*—The 12 month period which begins October 1 and extends through September 30 of the next calendar year, designated by the year in which it ends. (The 1996 crop year begins October 1, 1995, and ends September 30, 1996).

(e) *Field market value A*—The wholesale market value for the unit immediately prior to the occurrence of the loss.

(f) *Field market value B*—The wholesale market value remaining for the unit immediately following the occurrence of the loss.

(g) *Irrigated practice*—A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to maintain the amount of insurance on the nursery plant inventory.

(h) *Monthly loss deductible*—The result of multiplying the smaller of field market value A or the highest monthly market value reported on the nursery plant inventory summary by 100 percent (100%) less the percentage for the coverage level you elect, not to exceed the annual loss deductible. When inventory is added or restocked by a revised nursery plant inventory summary, the monthly loss deductible will be calculated based on the revised monthly market value, not to exceed the annual loss deductible.

(i) *Monthly market value*—The sum of the wholesale market value of all insurable plants in the unit for a month based on your wholesale price list less the maximum discount granted to any buyer.

(j) *Nursery*—A business enterprise that produces ornamental plant types in standard nursery containers for the wholesale market.

(k) *Nursery eligible plant listing*—A listing contained in the Actuarial Table which specifies the plants eligible for insurance and any mandatory or recommended storage required for such plants in each hardiness zone defined by the United States Department of Agriculture.

(l) *Nursery plant inventory summary*—A report that specifies numbers and prices of plants included in the nursery inventory.

(m) *Smallest dimension*—For a round container, the diameter; for any other container, the distance measured from one side directly across to the opposite side at the narrowest point.

(n) *Standard nursery containers*—Rigid containers not less than three (3) inches across the smallest dimension which are commercially sold to nurseries. Grow bags, trays, cellpacks, and burlap are not considered standard nursery containers.

(o) *Stock plants*—Plants being used for reproduction, for growing cuttings, for air layers or for propagating.

(p) *Wholesale market value*—The dollar valuation of the numbers of insurable plants actually contained within the unit at any time. The values used will be based on your wholesale price list less the maximum discount granted to any buyer.

(q) *Written agreement*—Designated terms of this policy may be altered by written agreement. Each agreement must be applied for by the insured in writing no later than the sales closing date and is valid for one year only. If not specifically renewed the following year, continuous insurance will be in accordance with the printed policy. All variable terms including, but not limited to, plant type and premium rate must be contained in the written agreement. Notwithstanding the sales closing date restriction contained herein, in specific instances, a written agreement may be applied for after the sales closing date and approved if, after a physical inspection of the nursery plant inventory, there is a determination that the inventory has the expectancy of meeting the amount of insurance. All applications for written agreements as submitted by the insured must contain all variable terms of the contract between the company and the insured that will be in effect if the written agreement is disapproved.

2. Unit Division

In lieu of the definition of unit contained in subsection 1.(tt) of the Basic Provisions (§ 457.8), a unit consists of all growing locations in the county within a five mile radius of the named insured locations designated on your nursery plant inventory summary. Any growing location more than five miles from any other growing location, but within the county, may be designated as a separate basic unit or be included in the closest unit listed on your nursery plant inventory summary.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

Subsection 3.(c) of the Basic Provisions (§ 457.8) is not applicable to the Nursery Crop Provisions.

4. Contract Changes

The contract change date is June 30 preceding the crop year (see the provisions of section 4 (Contract Changes) of the Basic Provisions (§ 457.8)).

5. Cancellation and Termination Dates

In accordance with subsection 2.(f) of the Basic Provisions (§ 457.8), the cancellation and termination dates are September 30 preceding the crop year.

6. Nursery Plant Inventory Summary

(a) For the purposes of the provisions of section 6 (Report of Acreage) of the Basic Provisions (§ 457.8), the term ''acreage'' means ''nursery plant inventory.''

(b) Your annual nursery plant inventory summary will be used to determine your premium and the amount of insurance for each unit. If you do not submit the summary by the reporting date, we may elect to determine the nursery plant inventory for each unit or we may deny liability on any unit. Errors in reporting units may be corrected by us at the time of loss adjustment.

(c) You must submit a nursery plant inventory summary to us on or before September 30 preceding the crop year. This summary must include, by unit and by month for each type of plant in the inventory, the:

(1) Container sizes;

(2) Number of plants;

(3) Wholesale price for each month of the crop year; and

(4) Your share.

If your inventory will change within a specific month, report the largest inventory that you will have for that month.

(d) With our consent, you may revise your nursery plant inventory summary to correct or change the value of the insurable inventory caused by a quantity change if the amount of the revision is at least 10 percent of the highest monthly market value reported on the nursery plant inventory summary or $25,000, whichever is smaller. You may not revise your nursery plant inventory summary after the sales closing date to add plants not listed on the Nursery Eligible Plant Listing. If you wish to revise the nursery plant inventory summary, you must notify us in writing at least 14 days before a change in inventory value. We must inspect and accept the nursery before insurance attaches on any proposed increase in inventory if:

(1) The storage facilities have changed in any way since our previous inspection; or

(2) The revision includes plants that have specific over-wintering storage requirements and that were not previously reported on your nursery plant inventory summary.

(e) Insurable plants that are not reported on your nursery plant inventory summary will not be insured, but the value of such plants after a loss will be included as production to count. Such unreported inventory may reduce the amount of any indemnity payable to you.

(f) You must designate separately any plant inventory that is not insurable.

(g) Subsection 6.(f) of the Basic Provisions (§ 457.8) is not applicable to the Nursery Crop Provisions.

7. Annual Premium

We will determine your premium as follows:

(a) The annual premium for each unit will be calculated by:

(1) Multiplying the number of each type of plant and size container designated on your nursery plant inventory summary for each month by prices for that type and container

size shown on your wholesale price list, less the maximum discount granted to any buyer;

(2) Adding the results of step 1, for each month;

(3) Multiplying the highest monthly market value for the crop year by the percentage for the coverage level you have elected;

(4) Multiplying the product obtained in (3) above by the appropriate premium rate for each appropriate plant classification listed on the actuarial table; and

(5) Multiplying the product obtained in (4) above by your share.

(b) The annual premium will be earned in full when insurance attaches. It is due and payable as follows:

(1) Forty percent (40%) on the later of September 30 preceding each crop year or the date we accept the inventory for insurance;

(2) Thirty percent (30%) on January 1 of the crop year; and

(3) Thirty percent (30%) on April 1 of the crop year.

(c) Additional premium earned from an increase in the nursery plant inventory summary is due and payable when the revised nursery plant inventory summary is approved by us.

(d) Premium will not be reduced due to a decrease in the nursery plant inventory summary, unless such decrease results from the deletion of uninsurable inventory from the summary that was erroneously reported as insurable.

8. Insured Plants

(a) In lieu of the provisions of section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the insured nursery plant inventory will be all nursery plants in the county reported by you or determined by us for which an application is accepted, for which a premium rate is provided by the actuarial table, and that:

(1) Are grown under an irrigated practice for which you have adequate facilities and water at the time coverage begins in order to carry out a good irrigation practice;

(2) Are classified as woody, herbaceous, or foliage landscape plants;

(3) Do not include plants that produce edible berries, fruits or nuts;

(4) Are grown in standard nursery containers (not planted in the ground), at least three (3) inches across the smallest dimension unless a written agreement is extended allowing a smaller container;

(5) Are initially inspected by us and determined to be acceptable;

(6) Are listed on the Nursery Eligible Plant Listing unless a written agreement provides otherwise;

(7) Are not stock plants;

(8) Are grown in accordance with the production practices for which premium rates have been established; and

(9) Meet the ''mandatory'' or ''recommended'' storage requirements unless you have signed the Frost, Freeze, and Cold Damage Exclusion Option for those nursery plants.

(b) The provisions of section 9 of the Basic Provisions (§ 457.8) are not applicable to the Nursery Crop Provisions.

9. Insurance Period

In lieu of the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8), coverage begins on each unit or part of a unit the later of October 1 or the date we accept the inventory for insurance, provided at least 40 percent (40%) of the annual premium is paid by the date specified in paragraph 7.(b)(1). Coverage will not attach for plant inventory added due to a revised nursery plant inventory summary until any additional premium is paid in full. Insurance ends for each unit at the earliest of:

(a) The date all plant inventory within the unit is sold or otherwise removed unless that inventory is replaced and additional earned premium is paid. (If a portion of the plants are sold or otherwise removed from inventory and are not replaced, insurance ends only on that part of the unit.);

(b) The date of final adjustment of the loss on the unit; or

(c) September 30 of the crop year.

10. Causes of Loss

(a) In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided for unavoidable damage caused only by the following causes of loss which occur within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Insects, but not damage due to insufficient or improper application of pest control measures;

(4) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption;

(8) Failure of the irrigation water supply, due to an unavoidable cause of loss occurring within the insurance period; or

(9) Failure or breakdown of frost/freeze protection equipment or facilities due to direct damage to such equipment or facilities from an insurable cause of loss, provided the insured nursery plants are damaged by freezing temperatures within 72 hours after the failure of such equipment or facilities and repair or replacement was not possible between the time of failure or breakdown and the time the freezing temperatures occurred.

(b) In addition to the causes of loss not insured against under section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), we do not insure against any loss caused by:

(1) Brownout;

(2) Failure of the power supply unless such failure is due to an insurable cause of loss;

(3) The inability to market the nursery plants as a direct result of quarantine, boycott, or refusal of a buyer to accept production;

(4) Fire, where weeds and other forms of undergrowth in the vicinity of the building and on your property have not been controlled; or

(5) Collapse or failure of buildings or structures unless due to an insured cause of loss.

11. Duties in the Event of Damage or Loss

(a) In addition to your duties contained under section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), you must:

(1) Obtain our written consent prior to:

(i) Destroying, selling or otherwise disposing of any plant inventory that is damaged; or

(ii) Changing or discontinuing your normal growing practices with respect to care and maintenance of the insured plant inventory.

(2) Upon our request, provide complete copies of your nursery plant inventory wholesale price list for the 12 month period immediately preceding the loss and your marketing records including plant shipping invoices for the same period.

(b) In addition to subsection 14.(c) of the Basic Provisions (§ 457.8), you must submit a claim for indemnity to us on our form, not later than 60 days after the earliest of:

(1) Your loss; or

(2) The end of the insurance period.

12. Settlement of Claim

(a) The indemnity will be the amount calculated by us for each unit as follows:

(1) Subtracting field market value B from the lesser of field market value A or the highest monthly market value for the unit reported on the nursery plant inventory summary to determine the total amount of loss;

(2) Subtracting therefrom the monthly loss deductible (not to exceed the remaining annual loss deductible); and

(3) Multiplying the result of (2) above by your share.

(b) Individual insured losses occurring on the same unit during the crop year may be accumulated if each loss is reported and valued by us to satisfy the annual loss deductible. Paragraph 12.(a)(2) will not apply to any subsequent individual loss determinations when the total amount of accumulated monthly loss deductibles is equal to or greater than the annual loss deductible. Total indemnities for a unit will not exceed the amount of insurance for the unit.

(c) The value of any insured plant inventory may be determined on the basis of our appraisals conducted after the end of the insurance period.

§ 457.115 Nursery Frost, Freeze, and Cold Damage Exclusion Option.

This is not a continuous option. Application for this option must be made on or before the sales closing date for each crop year this Option is to be in effect (see exception in item 2 below).

Insured's Name _____

Address _____

Contract Number _____

Identification Number _____

SSN/EIN _____ Tax I.D. _____

Crop Year _____ Unit Number _____

Hardiness Zone _____

For the crop year designated above, the Nursery Crop Provisions (§ 457.114) are amended in accordance with the following terms and conditions:

1. You must have the Common Crop Insurance Policy Basic Provisions and Nursery Crop Provisions in force.

2. This option must be submitted to us on or before the final date for

accepting applications for the crop year in which you wish to insure your nursery plant inventory under this option. If the provisions of paragraph 6.(d)(2) of the Nursery Crop Provisions apply, we may accept this option after the sales closing date, or we may allow additional plants to be added to this option after such date.

3. Executing this option does not reduce the premium rate for nursery crop insurance.

4. All provisions of the Basic Provisions (§ 457.8) and Nursery Crop Provisions (§ 457.114) not in conflict with this option are applicable.

5. Upon execution of this option, the following plant varieties will not have frost, freeze, or cold damage coverage on this unit because the mandatory (Risk Group A) or recommended (Risk Group B) over-wintering requirements will not be met.

Scientific name	Common name	Over-wintering requirements to be excluded

Insured's Signature

Date _____

Insurance Company Representative's Signature and Code Number

Date _____

Done in Washington, DC, on January 23, 1995.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 95–2057 Filed 1–26–95; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–95–002]

RIN 2115–AE47

Drawbridge Operation Regulations; New Rochelle Harbor, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a change to the regulations governing the Glen Island Bridge over New Rochelle Harbor at mile 0.8 in New Rochelle, New York. This change to the regulations will allow the bridge owner to reduce the number of hours in a day that the bridge is manned by drawtenders and opened on signal. This change is proposed because there have been few requests for bridge openings during the time periods at issue, i.e., from 1 May through 31 October, 12 midnight to 8 a.m., and from 1 November through 30 April, 8 p.m. to 8 a.m.

DATES: Comments must be received on or before March 28, 1995.

ADDRESSES: Comments may be mailed to Commander (obr), First Coast Guard District, Building 135A, Governors Island, New York, 10004–5073, or may be hand-delivered to the same address between 7 a.m. and 4 p.m., Monday through Friday, except federal holidays. The telephone number is (212) 668–7170. The comments will become part of this docket and will be available for inspection and copying by appointment at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Sylvia Bowens, Project Manager, Bridge Branch, (212) 668–7170.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01–95–002), the specific section of the proposal to which each comment applies, and given reasons for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format no larger than 8½″ by 11″, suitable for copying and electronic filing. If that is not practical, a second copy of any bound material is requested. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed post card or envelope.

The Coast Guard will consider all comments received during the comment period, and may change this proposal in light of comments received. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Commander (obr), First Coast Guard District at the address listed under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If the Coast Guard determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The drafters of this notice are Mr. John W. McDonald, Bridge Management Specialist, Bridge Branch, and LCDR Samuel R. Watkins, Project Counsel, District Legal Office.

Background and Purpose

The Glen Island Bridge spans New Rochelle Harbor, New York. It was built in 1929 and has a vertical clearance of 13' above mean high water (MHW) and a vertical clearance of 20' above mean low water (MLW). Glen Island Bridge logs for 1990 tallied only fifty-two (52) openings during the periods relevant to this proposed rule: forty-five (45) from July to October, between 12 midnight and 8 a.m.; and seven (7) during November and December, between 8 p.m. and 8 a.m. Bridge openings for 1991 totaled only fifty-one (51) during the relevant periods: forty-five (45) from May to July, between 12 midnight and 8 a.m.; and six (6) from January to April, between 8 p.m. and 8 a.m. In 1992 there were only twenty (20) openings during the relevant periods: fourteen (14) for the month of October, between 12 midnight and 8 a.m.; and six (6) during November and December, between 8 p.m. and 8 a.m. Bridge logs for 1993 tallied only eighty-two (82) bridge openings during the relevant periods: seventy-seven (77) from May to September, between 12 midnight and 8 a.m.; and five (5) from January to April, between 8 p.m. and 8 a.m. The bridge owner was not able to provide bridge logs from September 21, 1991 through September 23, 1992 because they were damaged by water during a storm in December, 1992.

The present operating regulations require the Glen Island Bridge to open on signal at all times. The proposed regulations would allow the bridge to remain closed from 1 May through 31 October, between 12 midnight and 8 a.m., and from 1 November through 30 April, between 8 p.m. and 8 a.m. These closed periods will relieve the bridge owner from the unnecessary burden of having the bridge manned with drawtenders at all times.

Discussion of Proposed Amendments

The bridge owner, Westchester County, requested a change to the present general operating regulations which require the bridge to open on signal at all times. It is proposed that 33 CFR 117.802 be added to provide that the Glen Island Bridge need not open

from 1 May through 31 October, between 12 midnight and 8 a.m., and from 1 November through 30 April, between 8 p.m. to 8 a.m. At all other times the bridge will open on signal. This change to the regulations is being proposed due to infrequent request for openings during the above time periods and will relieve the bridge owner of the burden of having personnel at the bridge at all times.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary. This conclusion is based on the fact that the regulation will not prevent mariners from transiting the bridge. It will only require that mariners plan their transits.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this action will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their fields and that otherwise qualify as ''small business concerns'' under Section 3 of the Small Business Act (15 U.S.C. 632). Because of the reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under 5 U.S.C. 605(b) that this action, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612, and it has determined that this proposed regulation does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2.e(32)(e) of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.802 is added to read as follows:

§ 117.802 New Rochelle Harbor.

(a) The draw of the Glen Island Bridge, mile 0.8 over New Rochelle Harbor, shall open on signal, except as follows:

(1) The draw need not open from 1 May through 31 October, between 12 midnight and 8 a.m.

(2) The draw need not open from 1 November through 30 April, between 8 p.m. and 8 a.m.

(b) The owners of the bridge shall provide, and keep in good legible condition, clearance gauges for each draw with figures not less than twelve (12) inches high, designed, installed and maintained according to the provisions of § 118.160 of this chapter.

Dated: January 17, 1995.

R.R. Clark,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 95–2090 Filed 1–26–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 52, 60, 61, and 64

[FRL–5147–3]

Enhanced Monitoring Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of comment period extension.

SUMMARY: This document extends until February 3, 1995 the public comment period on a limited number of specific issues concerning the proposed Enhanced Monitoring Program, 40 CFR parts 51, 52, 60, 61, and 64. The proposal was published on October 22, 1993 (58 FR 54648). On December 28, 1994, the public comment period was reopened to solicit comment on a limited number of specific issues (59 FR 66844). At the request of several commenters, EPA is extending the comment period for an additional seven days. The extension is limited to this short period because the enhanced monitoring rulemaking is subject to a court-ordered deadline of April 30, 1995, established by a consent decree in *Sierra Club* v. *Browner,* No. 93–0124 (NHJ)(D.D.C.). The extension of the public comment period is limited to the issues identified in the notice published December 28, 1994.

In addition, the EPA encourages public comment on the Enhanced Monitoring Reference Document and the associated Data Quality Objectives (DQO) process referenced in the notice published December 28, 1994 (see 59 FR 66844, 66846), not only during this public comment period but afterwards as well. In this manner, the Enhanced Monitoring Reference Document can be updated on a regular basis.

DATES: Comments on the limited number of specific issues identified in the December 28, 1994 notice must be received by February 3, 1995.

ADDRESSES: Comments must be mailed (in duplicate, if possible) to: EPA Air Docket (6102), Attention: Docket No. A–91–52, Room M–1500, Waterside Mall, 401 M Street SW, Washington, DC 20460. Docket: Supporting information used in developing the proposed regulations is contained in Docket No. A–91–52. This docket is available for public inspection and copying between 8 a.m. and 5:30 p.m. Monday through Friday, excluding government holidays, and is located at EPA Air Docket (6102), Room M–1500, Waterside Mall, 401 M Street SW, Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Scott Throwe, U.S. Environmental Protection Agency, Office of Enforcement and Compliance Assurance, Manufacturing, Energy and Transportation Division, at (202) 564–7013.

Dated: January 25, 1995.

Steven A. Herman,

Assistant Administrator for Enforcement and Compliance Assurance.

[FR Doc. 95–2158 Filed 1–26–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[MT23–1–6402b; FRL–5128–2]

Approval and Promulgation of Air Quality Implementation Plans; Montana; State Implementation Plan for East Helena SO_2 Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to fully approve the State implementation plan (SIP) submitted by the State of Montana to achieve attainment of the primary National Ambient Air Quality Standards (NAAQS) for sulfur dioxide (SO_2). The SIP was submitted by Montana to satisfy certain federal requirements for an approvable nonattainment area SO_2 SIP for East Helena. In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP revision, as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by February 27, 1995.

ADDRESSES: Written comments should be addressed to Meredith A. Bond at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations: U.S. Environmental Protection Agency, Region VIII, Air Programs Branch (8ART–AP), 999 18th Street, Suite 500, Denver, Colorado 80202–2405; and Montana Department of Health and Environmental Sciences, Air Quality Bureau, 836 Front Street, P.O. Box 200901, Helena, Montana 59620–0901.

FOR FURTHER INFORMATION CONTACT: Meredith Bond at (303)293–1764.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final notice which is located in the Rules Section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental Protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur dioxide.

Authority: 42 U.S.C. 7401–7671q.

Dated: December 14, 1994.

William P. Yellowtail,

Regional Administrator.

[FR Doc. 95–2018 Filed 1–26–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[IL105–1–6841b; FRL–5139–6]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) proposes to approve the State Implementation Plan (SIP) revision request submitted by the State of Illinois on October 25, 1994, for the purpose of requiring the installation of pressure/vacuum (P/V) relief valves on storage tank vent pipes at certain gasoline dispensing operations in the Chicago and Metro-East St. Louis (Metro-East) ozone nonattainment areas. In the final rules section of this **Federal Register**, the USEPA is approving this action as a direct final rule without prior proposal because USEPA views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If USEPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on the proposed rule. USEPA will not institute a second comment period on this action. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received on or before February 27, 1995.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR18-J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal and USEPA's analysis of it are available for inspection at: Regulation Development Section, Regulation Development Branch (AR18-J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Francisco Acevedo, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6061.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: December 29, 1994.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 95–2016 Filed 1–26–95; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Occupant Crash Protection; Denial of Petition for Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for rulemaking.

SUMMARY: This document announces the denial of a petition for rulemaking submitted by the Institute for Injury Reduction (IIR). The petitioner requested ''rulemaking or other action'' to require manufacturers to provide a specific warning for occupants to use lap belts in new vehicles with automatic safety belts. However, under a new statutory requirement, automatic safety belts are rapidly being replaced by the combination of air bags and manual lap/shoulder belts. Hence, the agency expects any safety concerns with automatic safety belts to become moot. Therefore, the petition is denied.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cohen, Chief, Office of Vehicle Safety Standards, National Highway

Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2264.

SUPPLEMENTARY INFORMATION: NHTSA received a petition for rulemaking from the Institute for Injury Reduction (IIR). The petitioner requested ''appropriate rulemaking or other action leading to the issuance * * * of a lap-belt-use warning requirement covering new vehicles sold in the United States and equipped with 'automatic' shoulder belts in any position.''

IIR argued that an automatic shoulder/manual lap belt restraint system often provides less protection in a crash than a fully manual shoulder/lap belt restraint system. According to the petitioner, ''a significant hazard of the former system is the overall propensity for ejection due to the non-use of the lap belt in conjunction with the automatic shoulder belt.'' The petitioner requested that NHTSA require a warning that an automatic shoulder belt is not to be used without a lap belt, and that the agency ''develop appropriate minimum performance standards specifying warning language and location, or criteria.''

NHTSA notes that it previously responded to a petition for rulemaking related to the subject of non-use of manual lap belts in conjunction with automatic shoulder belts. On September 9, 1993, NHTSA published (58 FR 47427) a notice denying a petition requesting that a warning light be required to indicate when lap belts in vehicles with automatic safety belts are not fastened. That petition had been submitted by Mr. Mark Goodson.

Like IIR, Mr. Goodson was concerned that if the person using an automatic safety belt does not engage the lap belt, the benefits of a three point restraint are reduced, and the person risks personal injury should a collision occur. Mr. Goodson recommended the addition of a warning light to remind users to engage the lap belt.

In denying Mr. Goodson's petition, NHTSA cited the fact that automatic belts are rapidly being replaced by the combination of air bags and manual lap/shoulder belts. Under the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), all passenger cars and light trucks must provide automatic crash protection by means of air bags, beginning in the late 1990's.

More specifically, as explained in NHTSA's final rule implementing that part of ISTEA, at least 95 percent of each manufacturer's passenger cars manufactured on or after September 1, 1996 and before September 1, 1997 must be equipped with an air bag and a manual lap/shoulder belt at both the driver's and right front passenger's seating position. Every passenger car manufactured on or after September 1, 1997 must be so equipped. The same requirement for light trucks is being phased in beginning on September 1, 1997. See 58 FR 46551, September 2, 1993.

Prior to the enactment of ISTEA, manufacturers had been permitted under Standard No. 208, Occupant Crash Protection, to provide automatic crash protection by means of air bags or automatic belts. The automatic crash protection requirements for cars have been in effect since the late 1980's; the requirements began to be phased in for light trucks on September 1, 1994.

Manufacturers are in fact moving more quickly toward providing air bags than required by ISTEA. Ninety-nine percent of model year 1995 passenger cars are equipped with driver-side air bags, and about 87 percent are also equipped with passenger-side air bags. Moreover, in meeting the automatic crash protection phase-in requirements for light trucks, manufacturers are going directly to air bags rather than taking the interim step of installing automatic belts.

In the notice denying Mr. Goodson's petition, NHTSA stated that it expects any safety concerns with two-point automatic belts to become moot as automatic belts are replaced by air bags with manual lap/shoulder belts. The agency indicated that, given the limited time until automatic belts are replaced by air bags, it believes that any problems can be addressed by public education efforts. NHTSA noted that on October 5, 1992, it issued a news release stating that ''drivers and passengers of cars equipped with front-seat automatic shoulder belts should also use the manual lap belt for maximum protection.'' The agency stated that it would continue to periodically remind consumers of the need to wear the manual lap belt which accompanies some forms of automatic belts.

NHTSA believes that the same rationale for denying Mr. Goodson's petition also applies to the IIR petition. In fact, the time until automatic belts are replaced by air bags is even more limited. By the time the agency completed any rulemaking to require a specific warning, it is unlikely that any vehicles would be subject to the requirement. Therefore, such a rulemaking would not result in any safety benefits. Accordingly, the agency finds that there is not a reasonable possibility that the requested rule would be issued at the conclusion of a rulemaking proceeding.

The agency continues to believe that any problems in this area can be addressed by public education efforts. This is true for both the small number of new vehicles that will be produced with two-point automatic belts and for the existing vehicles incorporating this design. NHTSA notes that its consumer information pamphlet entitled ''Safety Belts Proper Use'' includes the following statement:

> In some vehicles, the shoulder belt comes across your chest automatically, but the lap belt must be buckled manually. *If your vehicle has a manual lap belt, it must be buckled for maximum protection.* Use the complete system the manufacturer installed in your vehicle and follow the instructions provided in the owner's manual.

NHTSA shares IIR's concern about the need for occupants to fully utilize the crash protection equipment provided by manufacturers, whether the manual lap belt provided with some automatic belts or the manual lap/shoulder belts being provided with air bags. The agency will continue its public education efforts in these areas.

For the reasons discussed above, the agency is denying the IIR petition.

Authority: 49 U.S.C. 30103 and 30162; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 23, 1995.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 95–2116 Filed 1–26–95; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register

Vol. 60, No. 18

Friday, January 27, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Environmental Impact Statement for the South Lindenberg Timber Sale(s), Tongass National Forest, Alaska

AGENCY: USDA, Forest Service.

ACTION: Revised Notice of Intent to prepare an environmental impact statement (revises previous NOI, page 38557 in the 7/19/93 **Federal Register**).

SUMMARY: The proposed action is to harvest approximately 40 million board feet of timber and build the associated road system. The existing Tonka log transfer facility would be used. The study area is located southwest of Petersburg, Alaska, on Kupreanof Island. It encompasses approximately 65,000 acres at elevations ranging from sea level to 3,000 feet. The area includes VCUs 437 and 439 and portions of 447 and 448. This includes townships 58, 59, 60, and 61 south, and ranges 77, 78, and 79 east, Copper River Meridian.

DATES: Additional comments concerning the proposal to harvest timber in the South Lindenberg study area should be received in writing by March 15, 1995. Send requests for further information or written comments to Jim Thompson, Planning Team Leader, USDA Forest Service, P.O. Box 1328, Petersburg, AK, 99833 (907) 772–3871.

SUPPLEMENTARY INFORMATION:

1. Purpose and Scope of the Decision

The purpose of the project is to provide approximately 40 million board feet of timber for harvest according to direction described in the Tongass Land Management Plan, to meet the Federal obligation to make timber volume available for harvest by timber operators, and to improve the timber productivity of the project area by harvesting mature stands of timber and replacing them with faster growing stands of second-growth timber.

The decision to be made is whether to make timber available for harvest and improve timber productivity in the South Lindenberg Study Area while also providing a combination of recreation, fish, water, and wildlife for the resource uses of society now and into the future. This decision will be made by Abigail R. Kimbell, Forest Supervisor of the Stikine Area.

If timber is made available for harvest, the Forest Supervisor will also decide (a) the volume of timber to make available, (b) the location and design of the timber harvest units and log transfer facilities, (c) the location and design of associated mainline and local road corridors, and (d) appropriate mitigation measures for all alternatives in the project area.

1a. Public Involvement Process

A public scoping letter was sent to all persons who indicated an interest in the project by responding to the Stikine Area Project Schedule, or who otherwise notified the Stikine Area that they were interested in the South Lindenberg Timber Harvest project. Public meetings were held to gather additional information from interested persons.

1b. Alternatives

Alternatives will include the no action alternative, and are likely to include three to five action alternatives, all of which will harvest approximately 40 million board feet of timber. The alternatives will vary according to the location of units, for example one alternative may spread harvest units evenly through the study area while another may concentrate the harvest in a portion of the study area. The road systems will vary with each alternative accordingly.

1c. Significant Issues

1. Timber Management. How will long-term forest health and productivity be affected by harvesting and the specific harvest treatments proposed for the South Lindenberg area?

2. Harvest Economics. Will action alternatives within the study area include timber harvest that is profitable and meet economic criteria on the Tongass National Forest?

3. Soils. To what degree will soil erosion and sedimentation increase as a result of harvest activities and the construction of roads in the South Lindenberg area?

4. Watersheds. To what degree will timber harvesting affect the hydrologic balance and water quality of streams in the South Lindenberg study area?

5. Fisheries. What effects will timber harvest and road construction have on habitats used by trout and salmon?

6. Wildlife. What effects will timber harvest and related activities have on wildlife habitat?

7. Threatened and Endangered Species. To what extent will harvesting and road construction result in impacts to any populations of threatened or endangered species?

8. Biodiversity. To what extent will timber harvesting associated with the South Lindenberg Sale affect the biodiversity and old growth structure of Kupreanof Island?

9. Subsistence. To what extent will each alternative affect subsistence resources and use within the study area?

10. Recreation. What effect will each alternative have on recreational opportunities?

11. Visual Appearance. To what extent will each alternative influence the landscape character of the study area, and to what extent will harvest designs be mitigated to protect visual guality?

2. Expected Time for Completion

A draft Environmental Impact Statement is projected for issuance approximately March 1995. Issuance of the Final Environmental Impact Statement is projected for August 1995.

3. Comments

Interested publics are invited to comment.

The comment period on the draft environmental impact statement will be 45 days from the date of the Environmental Protection Agency's notice of availability appears in the **Federal Register**. The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process.

First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and

contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553, (1978).*

Also, environmental objections that could be raised at the draft environmental impact statement stage but are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 f.2d 1016, 1022, (9th Cir. 1986) and *Wisconsin Heritages, Inc.,* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).

Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the Draft EIS comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed actions, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The responsible official for the decision is Abigail R. Kimbell, Stikine Area Forest Supervisor, Petersburg, Alaska.

Written comments and suggestions concerning the analysis and Environmental Impact Statement should be sent to Jim Thompson, ID Team Leader, P.O. Box 1328, Petersburg, AK, 99833, (907) 772–3871.

Dated: January 12, 1995.

Abigail R. Kimbell,

Forest Supervisor.

[FR Doc. 95–2027 Filed 1–26–95; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–809]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From Argentina

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 27, 1995.

FOR FURTHER INFORMATION CONTACT: Irene Darzenta or Kate Johnson, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–6320 or (202) 482–4929.

Preliminary Determination

The Department of Commerce (the Department) preliminarily determines that small diameter circular seamless carbon and alloy steel standard, line, and pressure pipe (seamless pipe) from Argentina is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the notice of initiation on July 13, 1994 (59 FR 37025, July 20, 1994), the following events have occurred.

On July 18, 1994, Siderca Corporation of Houston, Texas, an importer of the subject merchandise from Argentina, challenged the standing of petitioner for a considerable portion of the subject merchandise on the ground that petitioner is not an ''interested party.'' On September 1, 1994, Siderca submitted a letter clarifying its July 18, 1994, submission.

On August 8, 1994, the U.S. International Trade Commission (ITC) issued an affirmative preliminary injury determination (USITC Publication 2734, August 1994).

On August 19, 1994, we sent a questionnaire to Siderca S.A.I.C. (Siderca), the only named respondent in this investigation. On September 12, 1994, Siderca informed the Department that it would not be responding to the questionnaire.

On October 21 and 31, 1994, (respectively) both petitioner and respondent provided comment and rebuttal on the issue of class or kind of merchandise [1] in response to the Department's request for comments in the notice of initiation. Petitioner submitted additional comments on November 17, 1994.

On October 27, 1994, the Department received a request from petitioner to postpone the preliminary determination until January 19, 1995. On November 18, 1994, we published in the **Federal Register** (59 FR 59748), a notice announcing the postponement of the preliminary determination until not later than January 19, 1995, pursuant to petitioner's request, in accordance with 19 C.F.R. 353.15 (c) and (d).

Scope of Investigation

For purposes of this investigation, seamless pipes are seamless carbon and alloy (other than stainless) steel pipes, of circular cross-section, not more than 114.3mm (4.5 inches) in outside diameter, regardless of wall thickness, manufacturing process (hot-finished or cold-drawn), end finish (plain end, bevelled end, upset end, threaded, or threaded and coupled), or surface finish. These pipes are commonly known as standard pipe, line pipe or pressure pipe, depending upon the application. They may also be used in structural applications.

The seamless pipes subject to these investigations are currently classifiable under subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States (HTSUS).

The following information further defines the scope of this investigation, which covers pipes meeting the physical parameters described above:

Specifications, Characteristics and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the American

[1] In its October 21, 1994, submission, respondent argued that the subject merchandise constitutes two classes or kind of merchandise—less than or equal to 2 inches and greater than 2 inches. Based on this allegation, it contended that the petitioner lacked standing to initiate an investigation with regard to seamless pipe and tube between 2⅜ and 4.5 inches in outside diameter because it does not produce such merchandise. (*See* ''Standing'' section of this notice.)

Society for Testing and Materials (ASTM) standard A–106 may be used in temperatures of up to 1000 degrees Fahrenheit, at various American Society of Mechanical Engineers (ASME) code stress levels. Alloy pipes made to ASTM standard A–335 must be used if temperatures and stress levels exceed those allowed for A–106 and the ASME codes. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53 and API 5L specifications. Such triple certification of pipes is common because all pipes meeting the stringent A–106 specification necessarily meet the API 5L and ASTM A–53 specifications. Pipes meeting the API 5L specification necessarily meet the ASTM A–53 specification. However, pipes meeting the A–53 or API 5L specifications do not necessarily meet the A–106 specification. To avoid maintaining separate production runs and separate inventories, manufacturers triple certify the pipes. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple certified pipes is in pressure piping systems by refineries, petrochemical plants and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, A–106 pipes may be used in some boiler applications.

The scope of this investigation includes all multiple-stenciled seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, whether or not also certified to a non-covered specification. Standard, line and pressure applications are defining characteristics of the scope of this investigation. Therefore, seamless pipes meeting the physical description above, but not produced to the A–106, A–53, or API 5L standards shall be covered if used in an A–106, A–335, A–53, or API 5L application.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in A–106 applications. These specifications include A–162, A–192, A–210, A–333, and A–524. When such pipes are used in a standard, line or pressure pipe application, such products are covered by the scope of this investigation.

Specifically excluded from this investigation are boiler tubing, mechanical tubing and oil country tubular goods except when used in a standard, line or pressure pipe application. Also excluded from this investigation are redraw hollows for cold-drawing when used in the production of cold-drawn pipe or tube.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Scope Issues

In our notice of initiation we identified two issues which we intended to consider further. The first issue was whether to consider end-use a factor in defining the scope of these investigations.[2] The second issue was whether the seamless pipe subject to this investigation constitutes more than one class or kind of merchandise. In addition to these two issues, interested parties have raised a number of other issues regarding whether certain products should be excluded from the scope of this investigation. These issues are discussed below.

Regarding the end-use issue, interested parties have submitted arguments about whether end-use should be maintained as a scope criterion in this investigation. After carefully considering these arguments, we have determined that, for purposes of this preliminary determination, we will continue to include end-use as a scope criterion. We agree with petitioner that pipe products identified as potential substitutes used in the same applications as products meeting the requisite ASTM specifications may fall within the same class or kind, and within the scope of any order issued in this investigation. However, we are well aware of the difficulties involved with requiring end-use certifications, particularly the burdens placed on the Department, the U.S. Customs Service, and the parties. We will strive to simplify any procedures used in this regard. We will, therefore, carefully consider any comment on this issue for purposes of our final determination.

Regarding the class or kind issue, although respondents propose dividing the scope of this investigation into two classes or kinds of merchandise, they do not agree on the merchandise characteristics that will define the two classes. The respondent in this investigation argues that the scope should be divided into two classes or kinds of merchandise based on size. The respondents in the Brazilian and German investigations argue that the scope should be divided into two classes or kinds based on the material composition of the pipe—carbon versus alloy. Petitioner maintains that the subject merchandise constitutes a single class or kind.

We have considered the class or kind comments of the interested parties and have analyzed this issue based on the criteria set forth by the Court of International Trade in *Diversified Products* v. *United States,* 6 CIT 155, 572 F. Supp. 883 (1983). These criteria are as follows: (1) The general physical characteristics of the merchandise; (2) the ultimate use of the merchandise; (3) the expectations of the ultimate purchasers; (4) the channels of trade; and (5) cost.

We note that certain differences exist between the physical characteristics of the various products (*e.g.,* size, composition). In addition, there appear to be cost differences between the various products. However, the information on record is not sufficient to justify dividing the class or kind of merchandise. The record on ultimate use of the merchandise and the expectations of the ultimate purchasers indicates that there is a strong possibility that there may be overlapping uses because any one of the various products in question may be used in different applications (*e.g.,* line and pressure pipe). Also, based upon the evidence currently on the record, we determine that the similarities in the distribution channels used for each of

[2] Various parties in this investigation, as well as in the concurrent investigations involving the same product from Argentina, Italy, and Germany have raised issues and made arguments. For purposes of simplicity and consistency across investigations, we will discuss all of these issues in this notice.

the proposed classes of merchandise outweigh any differences in the distribution channels.

In conclusion, while we recognize that certain differences exist between the products in the proposed class or kind of merchandise, we find that the similarities are more significant. Therefore, for purposes of this preliminary determination, we will continue to consider the scope as covering one class or kind of merchandise. This preliminary decision is consistent with past cases concerning steel pipe products. (*See e.g., Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe From Brazil* et. al., 57 FR 42940, September 17, 1992). However, a number of issues with respect to class or kind remain to be clarified. We will provide the parties with another opportunity to submit additional information and argument for the final determination. For a complete discussion of the parties' comments, as well as the Department's analysis, see memorandum from Gary Taverman, Acting Director, Office of Antidumping Investigations to Barbara Stafford, Deputy Assistant Secretary for Investigations, dated January 19, 1995.

Regarding the additional issues concerning exclusion of certain products, one party requests that the Department specify that multiple-stencilled seamless pipe stencilled to non-subject standards is not covered. Furthermore, this party argues that the scope language should be clarified so that it specifically states that only standard, line, and pressure pipe stencilled to the ASTM A–106, ASTM A–53 or API–5L standards are included, and that we clarify the meaning of ''mechanical tubing.'' In addition, this party requests that the Department exclude unfinished oil country tubular goods, ASTM A–519 pipe (a type of mechanical tubing) and mechanical tube made to customer specifications from the scope of this investigation.

Another party requests that the Department specifically exclude hollow seamless steel products produced in non-pipe sizes (known in the steel industry as tubes), from the scope of this investigation.

Because we currently have insufficient evidence to make a determination regarding these requests, we are not yet in a position to address these concerns. Therefore, for purposes of this preliminary determination, we will not exclude these products from the scope of this investigation. Once again, we will collect additional information and consider additional argument before the final determination.

Period of Investigation

The period of investigation is January 1, 1994 through June 30, 1994.

Standing

Siderca has challenged petitioner's standing with respect to seamless pipe and tube between 2⅜ and 4.5 inches in outside diameter. An interested party as defined, inter alia, in 353.2(k)(3) has standing to file a petition. (See 19 C.F.R. 353.12(a).) Further, section 353.2(k)(3) defines an interested party as a producer of the like product. In this investigation, the ITC has determined that there is a single like product. (*See* USITC Publication 2734, August 1994.) For purposes of determining standing, we have preliminarily accepted the ITC's determination that the merchandise subject to this investigation constitutes a single like product consisting of circular seamless carbon and alloy steel standard, line and pressure pipe, and tubes not more than 4.5 inches in outside diameter, and including redraw hollows (*See* USITC Publication 2734 at 18.) Therefore, because petitioner is a producer of the like product, we preliminarily determine that the petitioner has standing.

Best Information Available

In accordance with section 776(c) of the Act, we have determined that the use of best information available (BIA) is appropriate for Siderca, the only named respondent in this investigation. On September 12, 1994, as stated above, Siderca notified the Department that it would not participate in this investigation. Because Siderca refused to answer the Department's questionnaire, we find it has not cooperated in this investigation.

The Department's BIA methodology for uncooperative respondents is to assign the higher of the highest margin alleged in the petition or the highest rate calculated for another respondent. Accordingly, because there are no other respondents in this investigation, as BIA, we are assigning the highest margin among the margins alleged in the petition. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review* (56 FR 31692, 31704, July 11, 1991). The Department's methodology for assigning BIA has been upheld by the U.S. Court of Appeals of the Federal Circuit. *See Allied Signal Aerospace Co.* v. *United States,* 996 F.2d 1185 (Fed. Cir. 1993); *see also Krupp Stahl, AG et al.* v. *United States,* 822 F. Supp. 789 (CIT 1993).

Suspension of Liquidation

In accordance with section 733(d)(1) (19 U.S.C. 1673b(d)(1)) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of seamless pipe from Argentina, as defined in the ''Scope of Investigation'' section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated margin amount by which the foreign market value of the subject merchandise exceeds the United States price as shown below. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Weighted average margin percent
Siderca S.A.I.C.	108.13
All Others	108.13

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether imports of the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry, before the later of 120 days after the date of the preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments must be submitted, in at least ten copies, to the Assistant Secretary for Import Administration no later than March 10, 1995, and rebuttal briefs no later than March 15, 1995. In addition, a public version and five copies should be submitted by the appropriate date if the submission contains business proprietary information. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held, if requested, at 9:00 a.m. on March 17, 1995, at the U.S. Department of Commerce, Room 1414, 14th Street and Constitution Avenue NW., Washington DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing must submit a written request

to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099 within ten days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentation will be limited to arguments raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)) and 19 CFR 353.15(a)(4).

Dated: January 19, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–2107 Filed 1–26–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–351–826]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 27, 1995.

FOR FURTHER INFORMATION CONTACT: Irene Darzenta or Fabian Rivelis, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–6320 or 482–3853, respectively.

PRELIMINARY DETERMINATION: The Department of Commerce (the Department) preliminarily determines that small diameter circular seamless carbon and alloy steel, standard, line and pressure pipe from Brazil (seamless pipe) is being sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the notice of initiation on July 13, 1994 (59 FR 37025, July 20, 1994), the following events have occurred.

On August 8, 1994, the U.S. International Trade Commission (ITC) issued an affirmative preliminary injury determination (USITC Publication 2734, August 1994).

On August 11, 1994, we sent a cable to the U.S. Embassy in Brazil requesting information for purposes of respondent selection. Based on the information provided by the Embassy, as well as by petitioner, we identified as the two producers of subject merchandise in Brazil Mannesmann S.A. and NCS Siderurgica. On August 19, 1994, we named Mannesmann S.A. (MSA) as a mandatory respondent in this investigation and issued to it an antidumping questionnaire. Also on the same date, we sent an antidumping survey to NCS Siderurgica in order to determine whether it should be required to respond to a full questionnaire. Although NCS Siderurgica did not respond to the survey, based on information obtained from Iron and Steel Works of the World and petitioner's claim that MSA produced all of the subject merchandise exported from Brazil to the United States during the last 12 months prior to the filing of the petition, we determined that MSA would be the sole mandatory respondent in this investigation.

On October 21, 1994, we received comments on the issues of scope and class or kind of merchandise from interested parties, pursuant to the Department's invitation for such comments in its notice of initiation. On October 31 and November 17, 1994, we received rebuttal comments on this issue.

On September 12, 1994, we received from MSA a response to Section A of the Department's questionnaire. Responses to Sections B and C were submitted on October 14, 1994. On October 11, and November 3, 1994, we received petitioner's comments regarding MSA's responses to Sections A, B, and C. We sent MSA a supplemental questionnaire on November 18, 1994. MSA submitted its supplemental response, including revised sales listings, on December 9, 1994.

On October 27, 1994, the Department received a request from petitioner to postpone the preliminary determination until January 19, 1995. On November 18, 1994, we published in the **Federal Register** (59 FR 59748), a notice announcing the postponement of the preliminary determination until not later than January 19, 1995, in accordance with 19 C.F.R. 353.15 (c) and (d).

On January 4, 1995, respondent notified the Department of certain revisions to be made to its December 9, 1994, sales listings because of certain programming errors and inconsistencies concerning sale dates, grade codes and differences-in-merchandise data.

On January 9, 1995, petitioner submitted comments regarding the quality of MSA's responses, urging the Department to reject the responses and use best information available (BIA) in the preliminary determination because of the numerous deficiencies contained in these responses.

Scope of Investigation

For purposes of this investigation, seamless pipes are seamless carbon and alloy (other than stainless) steel pipes, of circular cross-section, not more than 114.3 mm (4.5 inches) in outside diameter, regardless of wall thickness, manufacturing process (hot-finished or cold-drawn), end finish (plain end, bevelled end, upset end, threaded, or threaded and coupled), or surface finish. These pipes are commonly known as standard pipe, line pipe or pressure pipe, depending upon the application. They may also be used in structural applications.

The seamless pipes subject to these investigations are currently classifiable under subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States (HTSUS).

The following information further defines the scope of this investigation, which covers pipes meeting the physical parameters described above:

Specifications, Characteristics and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the American Society for Testing and Materials (ASTM) standard A–106 may be used in temperatures of up to 1000 degrees Fahrenheit, at various American Society of Mechanical Engineers (ASME) code stress levels. Alloy pipes made to ASTM standard A–335 must be used if temperatures and stress levels exceed those allowed for A–106 and the ASME codes. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units,

automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53 and API 5L specifications. Such triple certification of pipes is common because all pipes meeting the stringent A–106 specification necessarily meet the API 5L and ASTM A–53 specifications. Pipes meeting the API 5L specification necessarily meet the ASTM A–53 specification. However, pipes meeting the A–53 or API 5L specifications do not necessarily meet the A–106 specification. To avoid maintaining separate production runs and separate inventories, manufacturers triple certify the pipes. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple certified pipes is in pressure piping systems by refineries, petrochemical plants and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, A–106 pipes may be used in some boiler applications.

The scope of this investigation includes all multiple-stenciled seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, whether or not also certified to a non-covered specification. Standard, line and pressure applications are defining characteristics of the scope of this investigation. Therefore, seamless pipes meeting the physical description above, but not produced to the A–106, A–53, or API 5L standards shall be covered if used in an A–106, A–335, A–53 or API 5L application.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in A–106 applications. These specifications include A–162, A–192, A–210, A–333, and A–524. When such pipes are used in a standard, line or pressure pipe application, such products are covered by the scope of this investigation.

Specifically excluded from this investigation are boiler tubing, mechanical tubing and oil country tubular goods except when used in a standard, line or pressure pipe application. Also excluded from this investigation are redraw hollows for cold-drawing when used in the production of cold-drawn pipe or tube.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Scope Issues

In our notice of initiation we identified two issues which we intended to consider further. The first issue was whether to consider end-use a factor in defining the scope of these investigations.[1] The second issue was whether the seamless pipe subject to this investigation constitutes more than one class or kind of merchandise. In addition to these two issues, interested parties have raised a number of other issues regarding whether certain products should be excluded from the scope of this investigation. These issues are discussed below.

Regarding the end-use issue, interested parties have submitted arguments about whether end-use should be maintained as a scope criterion in this investigation. After carefully considering these arguments, we have determined that, for purposes of this preliminary determination, we will continue to include end-use as a scope criterion. We agree with petitioner that pipe products identified as potential substitutes used in the same applications as products meeting the requisite ASTM specifications may fall within the same class or kind, and within the scope of any order issued in this investigation. However, we are well aware of the difficulties involved with requiring end-use certifications, particularly the burdens placed on the Department, the U.S. Customs Service, and the parties. We will strive to simplify any procedures used in this regard. We will, therefore, carefully consider any comment on this issue for purposes of our final determination.

Regarding the class or kind issue, although respondents propose dividing the scope of this investigation into two classes or kinds of merchandise, they do not agree on the merchandise characteristics that will define the two classes. The respondents in this investigation and in the German investigation argue that the scope should be divided into two classes or kinds based on the material composition of the pipe—carbon versus alloy. The respondent in the Argentine investigation argues that the scope should be divided into two classes or kinds of merchandise based on size. Petitioner maintains that the subject merchandise constitutes a single class or kind.

We have considered the class or kind comments of the interested parties and have analyzed this issue based on the criteria set forth by the Court of International Trade in *Diversified Products* v. *United States*, 6 CIT 155, 572 F. Supp. 883 (1983). These criteria are as follows: (1) the general physical characteristics of the merchandise; (2) the ultimate use of the merchandise; (3) the expectations of the ultimate purchasers; (4) the channels of trade; and (5) cost.

We note that certain differences exist between the physical characteristics of the various products (e.g., size, composition). In addition, there appear to be cost differences between the various products. However, the information on record is not sufficient to justify dividing the class or kind of merchandise. The record on ultimate use of the merchandise and the expectations of the ultimate purchasers indicates that there is a strong possibility that there may be overlapping uses because any one of the various products in question may be used in different applications (e.g., line and pressure pipe). Also, based upon the evidence currently on the record, we determine that the similarities in the distribution channels used for each of the proposed classes of merchandise outweigh any differences in the distribution channels.

In conclusion, while we recognize that certain differences exist between the products in the proposed class or kind of merchandise, we find that the similarities are more significant. Therefore, for purposes of this preliminary determination, we will continue to consider the scope as covering one class or kind of merchandise. This preliminary decision is consistent with past cases concerning steel pipe products. (See e.g., Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe From Brazil et. al., 57 FR 42940, September 17, 1992). However, a number of issues with respect to class

[1] Various parties in this investigation, as well as in the concurrent investigations involving the same product from Argentina, Italy, and Germany have raised issues and made arguments. For purposes of simplicity and consistency across investigations, we will discuss all of these issues in this notice.

or kind remain to be clarified. We will provide the parties with another opportunity to submit additional information and argument for the final determination. For a complete discussion of the parties' comments, as well as the Department's analysis, see memorandum from Gary Taverman, Acting Director, Office of Antidumping Investigations to Barbara Stafford, Deputy Assistant Secretary for Investigations, dated January 19, 1995.

Regarding the additional issues concerning exclusion of certain products, one party requests that the Department specify that multiple-stencilled seamless pipe stencilled to non-subject standards is not covered. Furthermore, this party argues that the scope language should be clarified so that it specifically states that only standard, line, and pressure pipe stencilled to the ASTM A–106, ASTM A–53 or API–5L standards are included, and that we clarify the meaning of ''mechanical tubing.'' In addition, this party requests that the Department exclude unfinished oil country tubular goods, ASTM A–519 pipe (a type of mechanical tubing) and mechanical tube made to customer specifications from the scope of this investigation.

Another party requests that the Department specifically exclude hollow seamless steel products produced in non-pipe sizes (known in the steel industry as tubes), from the scope of this investigation.

Because we currently have insufficient evidence to make a determination regarding these requests, we are not yet in a position to address these concerns. Therefore, for purposes of this preliminary determination, we will not exclude these products from the scope of this investigation. Once again, we will collect additional information and consider additional argument before the final determination.

Period of Investigation

The period of investigation (POI) is January 1, 1994, through June 30, 1994.

Such or Similar Comparisons

We have determined that all the products covered by this investigation constitute a single category of such or similar merchandise. We made fair value comparisons on this basis. In this case we only compared identical merchandise on the basis of the criteria defined in Appendix V to the antidumping questionnaire, on file in Room B–099 of the main building of the Department. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we did not make sales comparisons for the reasons outlined below in the ''Fair Value Comparisons'' section of this notice.

Fair Value Comparisons

Although we found several areas in MSA's response where further clarification and/or information will be required, we believe that much of respondent's data is usable for purposes of the preliminary determination. See Team Concurrence Memorandum dated January 19, 1995. However, our examination of the differences in merchandise (difmer) data provided in MSA's December 9, 1994, supplemental response revealed inconsistencies that make it impracticable for us to use our normal methodology for hyperinflationary economies.

Specifically, in its December 9, 1994, and January 4, 1995, submissions, respondent stated that it reported monthly replacement costs for home market products based on a production month (which also happens to be both the month of shipment and the month of sale). Monthly replacement costs for U.S. products were reported based on a production month equal to the reported month of shipment minus one month (which is not the month of sale). Although respondent's replacement costs were based on inflation-adjusted (UFIR) figures derived directly from its cost accounting system, respondent converted these ''indexed'' costs into current Brazilian currency (cruzeiros or reais, as appropriate) on the date of shipment, thereby creating a problem of costs not being comparable over time.

Since the January 4, 1995, submission, we did not have sufficient time for purposes of the preliminary determination to collect the necessary information to perform the proper indexation of these figures in accordance with the methodology outlined in Department Policy Bulletin No. 94.5 dated March 25, 1994. Given the lack of usable difmer data, which we believe can be rectified by issuing a second supplemental questionnaire, we made fair value comparisons only with respect to identical merchandise and without regard to difmers.

To determine whether sales of seamless pipe from MSA to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the ''United States Price'' and ''Foreign Market Value'' sections of this notice.

In accordance with past practice, we determine Brazil's economy to be hyperinflationary. See Final Determination of Sales at Less Than Fair Value: Ferrosilicon From Brazil, 59 FR 732, January 6, 1994 (Ferrosilicon). Pursuant to our methodology concerning such an economy, we made contemporaneous sales comparisons based on the month of the U.S. sale. In accordance with 19 C.F.R. 353.58, we made comparisons at the same level of trade, where possible.

United States Price

We based USP on purchase price (PP), in accordance with section 772(b) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States before importation and because exporter's sales price methodology was not otherwise indicated.

We calculated PP based on packed CIF or duty paid, delivered prices to unrelated customers. In accordance with section 772(d)(2)(A) of the Act, we made deductions, where appropriate, for ocean freight and insurance, U.S. brokerage, U.S. import duty and U.S. inland freight. Because respondent incorrectly reported U.S. shipment date based on a date later than when the merchandise was shipped from the factory, we revised U.S. shipment dates so that they appropriately reflect the date the merchandise is shipped from the factory. We believe that it is reasonable to assume that the approximate time difference between the reported U.S. shipment date and the date on which the merchandise left the factory (*i.e.*, upon production) is one month based respondent's December 9, 1994, and January 4, 1995, submissions.

We made an adjustment to USP for the taxes paid on the comparison sales in Brazil. In this investigation, there are four levels of taxes levied on sales of the subject merchandise in the home market. The ICMS tax is a regional tax, which varies depending upon the Brazilian state in which the purchase originates. The IPI, PIS and FINSOCIAL taxes are fixed percentage rate taxes. Because these taxes are calculated on the same base price, we find them not to be cascading. Thus, for each sale, we made only one tax adjustment which equals the sum of the actual tax rates. (See Ferrosilicon, 59 FR at 733).

Foreign Market Value

In order to determine whether there were sufficient sales of seamless pipe in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of seamless pipe to the volume of third country sales of seamless pipe in accordance with section 773(a)(1)(B) of the Act. Based on this comparison, we found that the volume of home market sales was greater than five percent of the

aggregate volume of third country sales. Therefore, we determined that MSA had a viable home market with respect to sales of seamless pipe during the POI.

During the POI, MSA made home market sales to unrelated customers, as well as to one related customer, Mannesmann Commerciale S.A. (MCSA). In its response, MSA provided two home market sales listings. One sales listing consisted of MSA's sales to MCSA and unrelated parties; the other consisted of MCSA's sales to unrelated parties including MCSA's unrelated customers (''downstream'' sales). MSA claims that its related party sales were made at arm's-length. To test the accuracy of respondent's claim, we compared related party prices to unrelated party prices using the test set forth in Appendix II to the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, 58 FR 37062 (July 9, 1994), and found that its prices to MCSA were not at arm's-length. Therefore, we excluded MSA's related party sales from our analysis, and used only those sales made to unrelated parties including the downstream sales.

In accordance with past practice, in order to eliminate the distortive effects of hyperinflation in the Brazilian economuy, we calculated separate weighted-average FMVs for each month. (See Ferrosilicon, 59 FR at 733).

In accordance with 19 C.F.R. 353.46, we calculated FMV based on FOB or CIF prices, exclusive of any inflation adjustment, charged to unrelated customers in Brazil. In light of the Court of Appeals for the Federal Circuit's (CAFC) decision in *Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement* versus *United States*, 13 F.3d 398 (Fed. Cir. 1994), the Department no longer can deduct home market movement charges from FMV pursuant to its inherent power to fill in gaps in the antidumping statute. Instead, we will adjust for those expenses under the circumstance-of-sale provision of 19 C.F.R. 353.56(a) and the exporter's sales price offset provision of 19 C.F.R. 353.56(b)(2), as appropriate. Accordingly, in the present case, we deducted post-sale home market movement charges from FMV under the circumstance-of-sale provision of 19 C.F.R. 353.56(a). This adjustment included home market inland freight and insurance.

Pursuant to 19 C.F.R. 353.56(a)(2), we made further circumstance-of-sale adjustments, where appropriate, for differences in credit expenses, warranties and product liability expenses between the U.S. and home markets. For certain transactions with reported negative values (*e.g.*, warranty expenses), we made no adjustment to FMV for the subject expenses. We recalculated U.S. credit expenses in accordance with respondent's methodology, using the revised U.S. shipment dates. (See ''United States Price'' section of this notice.) For sales with missing payment dates, we recalculated U.S. credit expenses using the date of the preliminary determination for date of payment. For sales with missing shipment and payment dates, we recalculated U.S. credit expenses using the average number of credit days between the revised shipment dates and the reported payment dates for respondent's U.S. sales which were reportedly shipped and paid. We disallowed MSA's claim for home market commissions made to a related party because respondent did not demonstrate that these commissions were arm's-length transactions. (See *LMI-La Metalli Industriale, S.p.A.* versus *United States*, 912 F.2d 455 (Fed. Cir. 1990)). We added interest revenue, where appropriate.

We also deducted home market packing and added U.S. packing costs, in accordance with section 773(a)(1) of the Act.

We adjusted for taxes collected in the home market. See ''United States Price'' section of this notice.

We did not make adjustments for differences in the physical characteristics of the merchandise for the reasons outlined above.

Currency Conversion

No certified rates of exchange, as furnished by the Federal Reserve Bank of New York, were available for the POI. In place of the official certified rates, we used the daily official exchange rates for the Brazilian currency published by the Central Bank of Brazil which were provided by respondent in its Section A response.

Verification

As provided in section 776(b) of the Act, we will verify the information used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of seamless pipe from Brazil, as defined in the ''Scope of Investigation'' section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated preliminary dumping margins, as shown below. The suspension of liquidation will remain in effect until further notice. The estimated preliminary dumping margins are as follows:

Manufacturer/producer/exporter	Margin percent
Mannesmann S.A.	12.83
All Others	12.83

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether imports of the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of the preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 C.F.R. 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than March 10, 1995, and rebuttal briefs no later than March 15, 1995. In accordance with 19 C.F.R. 353.38(b), we will hold a public hearing, if requested, to give interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on March 20, 1995 at 10:00 a.m. at the U.S. Department of Commerce, Room 1414, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, within ten days of the publication of this notice in the **Federal Register**. Request should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 C.F.R. 353.38(b), oral presentation will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)) and 19 C.F.R. 353.15(a)(4).

Dated: January 19, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–2106 Filed 1–26–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–428–820]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe From Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 27, 1995.

FOR FURTHER INFORMATION CONTACT: Kate Johnson or Irene Darzenta, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4929 or 482–6320, respectively.

PRELIMINARY DETERMINATION: The Department of Commerce (the Department) preliminarily determines that small diameter circular seamless carbon and alloy steel, standard, line and pressure pipe from Germany (seamless pipe) is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the notice of initiation published on July 20, 1994, (59 FR 37025), the following events have occurred.

On August 8, 1994, the U.S. International Trade Commission (ITC) issued an affirmative preliminary injury determination (USITC Publication 2734, August 1994).

On August 19, 1994, we named Mannesmannrohren-Werke AG (MRW) as the sole respondent in this investigation, and on the same date issued an antidumping questionnaire to this company. MRW accounted for at least 60 percent of the exports of the subject merchandise to the United States during the POI. Although it requested that it be allowed to respond voluntarily to the Department's questionnaire, on October 5, 1994, we informed Benteler A.G., another German producer, that we would not be accepting voluntary responses in this investigation due to administrative resource constraints.

On September 12, 1994, MRW submitted a response to Section A of the Department's questionnaire. Sections B and C were submitted on October 14, 1994. On October 11 and November 2, 1994, we received petitioner's comments regarding MRW's questionnaire responses. We issued a supplemental questionnaire on November 18, 1994. MRW submitted its supplemental response on December 9, 1994.

On October 21, 1994, we received comments on the issues of scope and class or kind of merchandise from interested parties, in response to the Department's invitation for such comments in its notice of initiation. On October 31 and November 17, 1994, we received rebuttal comments on this issue.

On October 27, 1994, the Department received a request from petitioner to postpone the preliminary determination until January 19, 1995. On November 18, 1994, we published in the **Federal Register** (59 FR 59748), a notice announcing the postponement of the preliminary determination until not later than January 19, 1995, in accordance with 19 C.F.R. 353.15(c) and (d).

Scope of Investigation

For purposes of this investigation, seamless pipes are seamless carbon and alloy (other than stainless) steel pipes, of circular cross-section, not more than 114.3mm (4.5 inches) in outside diameter, regardless of wall thickness, manufacturing process (hot-finished or cold-drawn), end finish (plain end, bevelled end, upset end, threaded, or threaded and coupled), or surface finish. These pipes are commonly known as standard pipe, line pipe or pressure pipe, depending upon the application. They may also be used in structural applications.

The seamless pipes subject to these investigations are currently classifiable under subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States (HTSUS).

The following information further defines the scope of this investigation, which covers pipes meeting the physical parameters described above:

Specifications, Characteristics and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the American Society for Testing and Materials (ASTM) standard A–106 may be used in temperatures of up to 1000 degrees fahrenheit, at various American Society of Mechanical Engineers (ASME) code stress levels. Alloy pipes made to ASTM standard A–335 must be used if temperatures and stress levels exceed those allowed for A–106 and the ASME codes. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53 and API 5L specifications. Such triple certification of pipes is common because all pipes meeting the stringent A–106 specification necessarily meet the API 5L and ASTM A–53 specifications. Pipes meeting the API 5L specification necessarily meet the ASTM A–53 specification. However, pipes meeting the A–53 or API 5L specifications do not necessarily meet the A–106 specification. To avoid maintaining separate production runs and separate inventories, manufacturers triple certify the pipes. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple certified pipes is in pressure piping systems by refineries, petrochemical plants and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application

of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, A–106 pipes may be used in some boiler applications.

The scope of this investigation includes all multiple-stenciled seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, whether or not also certified to a non-covered specification. Standard, line and pressure applications are defining characteristics of the scope of this investigation. Therefore, seamless pipes meeting the physical description above, but not produced to the A–106, A–53, or API 5L standards shall be covered if used in an A–106, A–335, A–53, or API 5L application.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in A–106 applications. These specifications include A–162, A–192, A–210, A–333, and A–524. When such pipes are used in a standard, line or pressure pipe application, such products are covered by the scope of this investigation.

Specifically excluded from this investigation are boiler tubing, mechanical tubing and oil country tubular goods except when used in a standard, line or pressure pipe application. Also excluded from this investigation are redraw hollows for cold-drawing when used in the production of cold-drawn pipe or tube.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Scope Issues

In our notice of initiation we identified two issues which we intended to consider further. The first issue was whether to consider end-use a factor in defining the scope of these investigations.[1] The second issue was whether the seamless pipe subject to this investigation constitutes more than one class or kind of merchandise. In addition to these two issues, interested parties have raised a number of other issues regarding whether certain products should be excluded from the scope of this investigation. These issues are discussed below.

[1] Various parties in this investigation, as well as in the concurrent investigations involving the same product from Argentina, Italy, and Germany have raised issues and made arguments. For purposes of simplicity and consistency across investigations, we will discuss all of these issues in this notice.

Regarding the end-use issue, interested parties have submitted arguments about whether end-use should be maintained as a scope criterion in this investigation. After carefully considering these arguments, we have determined that, for purposes of this preliminary determination, we will continue to include end-use as a scope criterion. We agree with petitioner that pipe products identified as potential substitutes used in the same applications as products meeting the requisite ASTM specifications may fall within the same class or kind, and within the scope of any order issued in this investigation. However, we are well aware of the difficulties involved with requiring end-use certifications, particularly the burdens placed on the Department, the U.S. Customs Service, and the parties. We will strive to simplify any procedures used in this regard. We will, therefore, carefully consider any comment on this issue for purposes of our final determination.

Regarding the class or kind issue, although respondents propose dividing the scope of this investigation into two classes or kinds of merchandise, they do not agree on the merchandise characteristics that will define the two classes. The respondents in this investigation as well as the Brazilian investigation argue that the scope should be divided into two classes or kinds based on the material composition of the pipe—carbon versus alloy. The respondent in the Argentine investigation argues that the scope should be divided into two classes or kinds of merchandise based on size. Petitioner maintains that the subject merchandise constitutes a single class or kind.

We have considered the class or kind comments of the interested parties and have analyzed this issue based on the criteria set forth by the Court of International Trade in *Diversified Products* v. *United States*, 6 CIT 155, 572 F. Supp. 883 (1983). These criteria are as follows: (1) the general physical characteristics of the merchandise; (2) the ultimate use of the merchandise; (3) the expectations of the ultimate purchasers; (4) the channels of trade; and (5) cost.

We note that certain differences exist between the physical characteristics of the various products (*e.g.*, size, composition). In addition, there appear to be cost differences between the various products. However, the information on record is not sufficient to justify dividing the class or kind of merchandise. The record on ultimate use of the merchandise and the expectations of the ultimate purchasers indicates that there is a strong possibility that there may be overlapping uses because any one of the various products in question may be used in different applications (*e.g.*, line and pressure pipe). Also, based upon the evidence currently on the record, we determine that the similarities in the distribution channels used for each of the proposed classes of merchandise outweigh any differences in the distribution channels.

In conclusion, while we recognize that certain differences exist between the products in the proposed class or kind of merchandise, we find that the similarities are more significant. Therefore, for purposes of this preliminary determination, we will continue to consider the scope as covering one class or kind of merchandise. This preliminary decision is consistent with past cases concerning steel pipe products. (See *e.g.*, Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe From Brazil et al., 57 FR 42940, September 17, 1992). However, a number of issues with respect to class or kind remain to be clarified. We will provide the parties with another opportunity to submit additional information and argument for the final determination. For a complete discussion of the parties' comments, as well as the Department's analysis, see memorandum from Gary Taverman, Acting Director, Office of Antidumping Investigations to Barbara Stafford, Deputy Assistant Secretary for Investigations, dated January 19, 1995.

Regarding the additional issues concerning exclusion of certain products, one party requests that the Department specify that multiple-stencilled seamless pipe stencilled to non-subject standards is not covered. Furthermore, this party argues that the scope language should be clarified so that it specifically states that only standard, line, and pressure pipe stencilled to the ASTM A–106, ASTM A–53 or API–5L standards are included, and that we clarify the meaning of ''mechanical tubing.'' In addition, this party requests that the Department exclude unfinished oil country tubular goods, ASTM A–519 pipe (a type of mechanical tubing) and mechanical tube made to customer specifications from the scope of this investigation.

Another party requests that the Department specifically exclude hollow seamless steel products produced in non-pipe sizes (known in the steel industry as tubes), from the scope of this investigation.

Because we currently have insufficient evidence to make a

determination regarding these requests, we are not yet in a position to address these concerns. Therefore, for purposes of this preliminary determination, we will not exclude these products from the scope of this investigation. Once again, we will collect additional information and consider additional argument before the final determination.

Period of Investigation

The period of investigation (POI) is January 1, 1994, to June 30, 1994.

Such or Similar Comparisons

We have determined that all the products covered by this investigation constitute a single category of such or similar merchandise. We made fair value comparisons on this basis. In accordance with the Department's standard methodology, we first compared identical merchandise. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we made similar merchandise comparisons on the basis of the criteria defined in Appendix V to the antidumping questionnaire, on file in Room B–099 of the main building of the Department.

Fair Value Comparisons

To determine whether sales of seamless pipe from MRW to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the ''United States Price'' and ''Foreign Market Value'' sections of this notice. In accordance with 19 C.F.R. 353.58, we made comparisons at the same level of trade, where possible.

United States Price

We based USP on purchase price (PP), in accordance with section 772(b) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States before importation and because exporter's sales price methodology was not otherwise indicated.

We calculated PP based on packed prices to unrelated customers. In accordance with section 772(d)(2)(A) of the Act, we made deductions, where appropriate, foreign inland freight, inland insurance, ocean freight, U.S. brokerage, U.S. duty, wharfage, and U.S. inland freight. In the one instance where foreign inland freight had a missing value, we assigned the average foreign inland freight amount for all other reported transactions to the missing value. We also made an adjustment to USP for the value-added tax (VAT) paid on the comparison sales in Germany in accordance with our practice, pursuant to the Court of International Trade's (CIT) decision in *Federal-Mogul Corp. and The Torrington Co.* v. *United States*, Slip Op. 93–194 (CIT October 7, 1993). (See Final Determination of Sales at Less Than Fair Value: Calcium Aluminate Cement, Cement Clinker and Flux from France, 59 FR 14136, March 25, 1994). We recalculated VAT because respondent's calculation included discounts.

Foreign Market Value

In order to determine whether there were sufficient sales of seamless pipe in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of seamless pipe to the volume of third country sales of seamless pipe in accordance with section 773(a)(1)(B) of the Act. Based on this comparison, we determined that MRW had a viable home market with respect to sales of seamless pipe during the POI.

In accordance with 19 C.F.R. 353.46, we calculated FMV based on prices charged to both related (when appropriate) and unrelated customers in Germany. We compared related party prices to unrelated party prices using the test set forth in Appendix II to the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, 58 FR 37062 (July 9, 1994) and used in our FMV calculation those sales made to related parties that were at arm's length. We made deductions, where appropriate, for discounts and rebates. In instances where the reported quantity for certain sales was zero, we excluded these transactions from our analysis. In one instance where the reported rebate expense was negative, we set this expense for the particular transaction to zero.

In light of the Court of Appeals for the Federal Circuit's (CAFC) decision in *Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement* v. *United States*, 13 F.3d 398 (Fed. Cir. 1994), the Department no longer can deduct home market movement charges from FMV pursuant to its inherent power to fill in gaps in the antidumping statute. Instead, we will adjust for those expenses under the circumstance-of-sale provision of 19 C.F.R. 353.56(a) and the exporter's sales price offset provision of 19 C.F.R. 353.56(b)(2), as appropriate. Accordingly, in the present case, we deducted post-sale home market movement charges from FMV under the circumstance-of-sale provision of 19 C.F.R. 353.56(a). This adjustment included foreign inland freight.

Pursuant to 19 C.F.R. 353.56(a)(2), we made further circumstance-of-sale adjustments, where appropriate, for differences in credit expenses, warranties and inspection expenses between the U.S. and home markets. With regard to credit expenses in the home market, given that respondent only provided month and year for shipment and payment dates, we set shipment date equal to the first day of the reported month and payment date equal to the last day of the reported month and then calculated imputed credit in accordance with our normal methodology. For both markets, we calculated an average number of credit days when shipment and payment dates were missing and used the date of the preliminary determination, January 19, 1995, as payment date when only payment dates were missing. We deducted home market commissions and added U.S. indirect selling expenses capped by the amount of home market commissions.

We also deducted home market packing and added U.S. packing costs, in accordance with section 773(a)(1) of the Act. We made adjustments, where appropriate, for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act.

We adjusted for VAT in accordance with our practice. (*See* the ''United States Price'' section of this notice, above.)

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. *See* 19 C.F.R. 353.60(a).

Verification

As provided in section 776(b) of the Act, we will verify the information used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of seamless pipe from Germany, as defined in the **Scope of Investigation** section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated preliminary dumping margins, as shown below. The suspension of liquidation will remain in effect until further notice. The estimated preliminary dumping margins are as follows:

Manufacturer/producer/exporter	Margin percent
Mannesmannrohren-Werke AG	2.68%
All others	2.68%

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether imports of the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of the preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 C.F.R. 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than March 10, 1995, and rebuttal briefs no later than March 15, 1995. In accordance with 19 C.F.R. 353.38(b), we will hold a public hearing, if requested, to give interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on March 17, 1995, at 2:00 p.m. at the U.S. Department of Commerce, Room 1414, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, within ten days of the publication of this notice in the **Federal Register**. Request should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 C.F.R. 353.38(b), oral presentation will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)) and 19 C.F.R. 353.15(a)(4).

Dated: January 19, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–2105 Filed 1–26–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–475–814]

Notice of Preliminary Determination of Sales at Not Less Than Fair Value: Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe from Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATE: January 27, 1995.

FOR FURTHER INFORMATION CONTACT: Mary Jenkins or Kate Johnson, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–1756 or 482–4929, respectively.

PRELIMINARY DETERMINATION: The Department of Commerce (the Department) preliminarily determines that small diameter circular seamless carbon and alloy steel, standard, line and pressure pipe from Italy (seamless pipe) is not being, nor is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated *de minimis* margins are shown in the ''Preliminary Margin'' section of this notice.

Case History

Since the notice of initiation published on July 20, 1994, (59 FR 37025), the following events have occurred.

On August 8, 1994, the U.S. International Trade Commission (ITC) issued an affirmative preliminary injury determination (USITC Publication 2734, August 1994).

On August 19, 1994, we sent the antidumping questionnaire to Dalmine S.p.A., TAD USA, Inc., and Dalmine USA, Inc., (collectively ''Dalmine''), because petitioner claimed that Dalmine was the sole producer of the subject merchandise exported to the United States from Italy during the period of investigation (POI). In order to determine if Dalmine accounted for over 60 percent of the exports to the United States and, accordingly, could be named as the sole respondent, we also sent an abbreviated version of Section A of the questionnaires to the following Italian producers named in the petition: Acciaierie e Tubificio Meridionali SpA, Pietra SpA-Acciaierie Ferriere e Tubifici (Pietra SpA), Tubicar SpA, Sandvik Italia SpA, and Seta Tubi Srl. On September 2 and 23, 1994, Dalmine provided volume and value data of sales of subject merchandise during the POI. Acciaierie e Tubificio Meridionali, Sandvik Italia and Tubicar SpA informed the Department that they did not sell subject merchandise to the United States during the POI. Seta Tubi Srl's antidumping questionnaire was returned to the Department by the postal service as undeliverable because the address could not be found. We did not receive a response from Pietra SpA. However, Pietra SpA sent a facsimile to the U.S. Consulate in Milan in which it reported a small volume of shipments of the subject merchandise to the United States from January 1 to March 31, 1994. On September 27, 1994, we determined that Dalmine S.p.A. (Dalmine) should be the sole respondent in this investigation because it accounted for at least 60 percent of the exports of the subject merchandise to the United States during the POI.

On September 19, 1994, we received a request from Dalmine to exclude certain ''outlier'' sales from its United States and home market sales listings. On September 23, 1994, petitioner submitted its opposition to Dalmine's request. On September 26, 1994, Dalmine responded to petitioner's September 23, 1994, objections. We requested additional information from Dalmine concerning the ''outlier'' sales on September 30, 1994. Based on Dalmine's request, and after considering all comments received, on November 28, 1994, we informed Dalmine that it would be exempted from reporting certain ''outlier'' home market and U.S. sales.

On December 6 and 19, 1994, Dalmine requested that it be exempt from reporting an insignificant quantity of sales made by related resellers and sought clarification concerning which of its customers are ''related parties.'' On December 12 and 22, 1994, we received comments from petitioner addressing Dalmine's request to exclude reporting certain related party sales. On January 19, 1995, after considering the additional request and considering comments, we also granted Dalmine an exemption from reporting an insignificant quantity of home market sales made by related resellers. The Department accepted Dalmine's definition of related party, as described its B and C responses. Therefore, it was not necessary to provide additional guidance.

On September 23, 1994, we received Dalmine's response to Section A of the Department's questionnaire. Responses to Sections B and C of the questionnaire were submitted on October 7, 1994. On October 11, 1994, petitioner commented on Dalmine's Section A questionnaire response. On October 11 and 31, 1994, we received additional comments from petitioner regarding Dalmine's Sections

A, B and C responses. On November 18, we issued a supplemental questionnaire to Dalmine. We received a response on December 19, 1994.

On October 21 and 31, and November 17, 1994, we received comments and rebuttal comments on the issues of scope and class or kind of merchandise from interested parties, pursuant to the Department's invitation for such comments in its notice of initiation.

On October 27, 1994, the Department received a request from petitioner to postpone the preliminary determination until January 19, 1995. On November 18, 1994, we published in the **Federal Register** (59 FR 59748), a notice announcing the postponement of the preliminary determination until not later than January 19, 1995, in accordance with 19 C.F.R. 353.15(c) and (d).

Scope of Investigation

For purposes of this investigation, seamless pipes are seamless carbon and alloy (other than stainless) steel pipes, of circular cross-section, not more than 114.3mm (4.5 inches) in outside diameter, regardless of wall thickness, manufacturing process (hot-finished or cold-drawn), end finish (plain end, bevelled end, upset end, threaded, or threaded and coupled), or surface finish. These pipes are commonly known as standard pipe, line pipe or pressure pipe, depending upon the application. They may also be used in structural applications.

The seamless pipes subject to these investigations are currently classifiable under subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States (HTSUS).

The following information further defines the scope of this investigation, which covers pipes meeting the physical parameters described above:

Specifications, Characteristics and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the American Society for Testing and Materials (ASTM) standard A–106 may be used in temperatures of up to 1000 degrees fahrenheit, at various American Society of Mechanical Engineers (ASME) code stress levels. Alloy pipes made to ASTM standard A–335 must be used if temperatures and stress levels exceed those allowed for A–106 and the ASME codes. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53 and API 5L specifications. Such triple certification of pipes is common because all pipes meeting the stringent A–106 specification necessarily meet the API 5L and ASTM A–53 specifications. Pipes meeting the API 5L specification necessarily meet the ASTM A–53 specification. However, pipes meeting the A–53 or API 5L specifications do not necessarily meet the A–106 specification. To avoid maintaining separate production runs and separate inventories, manufacturers triple certify the pipes. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple certified pipes is in pressure piping systems by refineries, petrochemical plants and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, A–106 pipes may be used in some boiler applications.

The scope of this investigation includes all multiple-stenciled seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, whether or not also certified to a non-covered specification. Standard, line and pressure applications are defining characteristics of the scope of this investigation. Therefore, seamless pipes meeting the physical description above, but not produced to the A–106, A–53, or API 5L standards shall be covered if used in an A–106, A–335, A–53, or API 5L application.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in A–106 applications. These specifications include A–162, A–192, A–210, A–333, and A–524. When such pipes are used in a standard, line or pressure pipe application, such products are covered by the scope of this investigation.

Specifically excluded from this investigation are boiler tubing, mechanical tubing and oil country tubular goods except when used in a standard, line or pressure pipe application. Also excluded from this investigation are redraw hollows for cold-drawing when used in the production of cold-drawn pipe or tube.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Scope Issues

In our notice of initiation we identified two issues which we intended to consider further. The first issue was whether to consider end-use a factor in defining the scope of these investigations.[1] The second issue was whether the seamless pipe subject to this investigation constitutes more than one class or kind of merchandise. In addition to these two issues, interested parties have raised a number of other issues regarding whether certain products should be excluded from the scope of this investigation. These issues are discussed below.

Regarding the end-use issue, interested parties have submitted arguments about whether end-use should be maintained as a scope criterion in this investigation. After carefully considering these arguments, we have determined that, for purposes of this preliminary determination, we will continue to include end-use as a scope criterion. We agree with petitioner that pipe products identified

[1] Various parties in this investigation, as well as in the concurrent investigations involving the same product from Argentina, Italy, and Germany have raised issues and made arguments. For purposes of simplicity and consistency across investigations, we will discuss all of these issues in this notice.

as potential substitutes used in the same applications as products meeting the requisite ASTM specifications may fall within the same class or kind, and within the scope of any order issued in this investigation. However, we are well aware of the difficulties involved with requiring end-use certifications, particularly the burdens placed on the Department, the U.S. Customs Service, and the parties. We will strive to simplify any procedures used in this regard. We will, therefore, carefully consider any comment on this issue for purposes of our final determination.

Regarding the class or kind issue, although respondents propose dividing the scope of this investigation into two classes or kinds of merchandise, they do not agree on the merchandise characteristics that will define the two classes. The respondents in the Brazilian and German investigations argue that the scope should be divided into two classes or kinds based on the material composition of the pipe—carbon versus alloy. The respondent in the Argentine investigation argues that the scope should be divided into two classes or kinds of merchandise based on size. Petitioner maintains that the subject merchandise constitutes a single class or kind.

We have considered the class or kind comments of the interested parties and have analyzed this issue based on the criteria set forth by the Court of International Trade in *Diversified Products* v. *United States*, 6 CIT 155, 572 F. Supp. 883 (1983). These criteria are as follows: (1) The general physical characteristics of the merchandise; (2) the ultimate use of the merchandise; (3) the expectations of the ultimate purchasers; (4) the channels of trade; and (5) cost.

We note that certain differences exist between the physical characteristics of the various products (*e.g.*, size, composition). In addition, there appear to be cost differences between the various products. However, the information on record is not sufficient to justify dividing the class or kind of merchandise. The record on ultimate use of the merchandise and the expectations of the ultimate purchasers indicates that there is a strong possibility that there may be overlapping uses because any one of the various products in question may be used in different applications (*e.g.*, line and pressure pipe). Also, based upon the evidence currently on the record, we determine that the similarities in the distribution channels used for each of the proposed classes of merchandise outweigh any differences in the distribution channels.

In conclusion, while we recognize that certain differences exist between the products in the proposed class or kind of merchandise, we find that the similarities are more significant. Therefore, for purposes of this preliminary determination, we will continue to consider the scope as covering one class or kind of merchandise. This preliminary decision is consistent with past cases concerning steel pipe products. (See *e.g.*, Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe From Brazil et. al., 57 FR 42940, September 17, 1992). However, a number of issues with respect to class or kind remain to be clarified. We will provide the parties with another opportunity to submit additional information and argument for the final determination. For a complete discussion of the parties' comments, as well as the Department's analysis, see memorandum from Gary Taverman, Acting Director, Office of Antidumping Investigations to Barbara Stafford, Deputy Assistant Secretary for Investigations, dated January 19, 1995.

Regarding the additional issues concerning exclusion of certain products, one party requests that the Department specify that multiple-stencilled seamless pipe stencilled to non-subject standards is not covered. Furthermore, this party argues that the scope language should be clarified so that it specifically states that only standard, line, and pressure pipe stencilled to the ASTM A–106, ASTM A–53 or API–5L standards are included, and that we clarify the meaning of ''mechanical tubing.'' In addition, this party requests that the Department exclude unfinished oil country tubular goods, ASTM A–519 pipe (a type of mechanical tubing) and mechanical tube made to customer specifications from the scope of this investigation.

Another party requests that the Department specifically exclude hollow seamless steel products produced in non-pipe sizes (known in the steel industry as tubes), from the scope of this investigation.

Because we currently have insufficient evidence to make a determination regarding these requests, we are not yet in a position to address these concerns. Therefore, for purposes of this preliminary determination, we will not exclude these products from the scope of this investigation. Once again, we will collect additional information and consider additional argument before the final determination.

Period of Investigation

The POI is January 1, 1994, through June 30, 1994.

Such or Similar Comparisons

We have determined that all the products covered by this investigation constitute a single category of such or similar merchandise. We made fair value comparisons on this basis. In accordance with the Department's standard methodology, we first compared identical merchandise. Referencing Appendix V of our questionnaire, Dalmine states that the specifications for the merchandise exported to the United States are identical to the specifications for the merchandise sold in the home market. Dalmine further claims that triple-stencilled merchandise sold in the U.S. market is identical to single-stencilled merchandise sold in the home market. We have accepted Dalmine's assertions for purposes of this preliminary determination. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, or where, according to respondent, comparisons of similar merchandise would result in differences-in-merchandise adjustments exceeding 20 percent, we made comparisons on the basis of constructed value (CV) because there was no comparable merchandise sold in the home market based on the criteria in Appendix V to the antidumping questionnaire, on file in Room B–099 of the main building of the Department.

Fair Value Comparisons

To determine whether sales of seamless pipe from Dalmine to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the ''United States Price'' and ''Foreign Market Value'' sections of this notice. In accordance with 19 C.F.R. 353.58, we made comparisons at the same level of trade, where possible.

United States Price

We based USP on purchase price (PP), in accordance with section 772(b) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States before importation and because exporter's sales price methodology was not otherwise indicated.

We calculated PP based on packed FOB U.S. port prices to unrelated customers. In accordance with section 772(d)(2)(A) of the Act, we made deductions, where appropriate, for foreign inland freight, ocean freight,

U.S. brokerage, marine insurance, and U.S. import duty.

We also made an adjustment to USP for the value-added tax (VAT) paid on the comparison sales in Italy in accordance with our practice, pursuant to the Court of International Trade's (CIT) decision in *Federal-Mogul Corp. and the Torrington Co.* v. *United States*, Slip Op. 93–194 (CIT) October 7, 1993). (See Final Determination of Sales at less Than Fair Value: Calcium Aluminate Cement, Cement Clinker and Flux from France, 59 FR 14136, March 25, 1994).

Foreign Market Value

In order to determine whether there were sufficient sales of subject merchandise in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of seamless pipe to the volume of third country sales of seamless pipe in accordance with section 773(a)(1)(B) of the Act. Based on this comparison, we found that the volume of home market sales was greater than five percent of the aggregate volume of third country sales. Therefore, we determined that Dalmine had a viable home market with respect to sales of seamless pipe during the POI.

In accordance with 19 C.F.R. 353.46, we calculated FMV based on ex-factory or delivered prices charged to unrelated and, where appropriate, to related customers in Italy. We compared related party prices using the test set forth in Appendix II to the Final Determination of Sales at Less than Fair Value; Certain Cold-rolled Carbon Steel Flat Products from Argentina, 58 FR 37062 (July 9, 1994), and used in our FMV calculation those sales made to related parties that were at arm's-length. We made deductions, where appropriate, for discounts.

In light of the Court of Appeals for the Federal Circuit's (CAFC) decision in *Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement* v. *United States,* 13 F.3d 398 (Fed. Cir. 1994), the Department no longer can deduct home market movement charges from FMV pursuant to its inherent power to fill in gaps in the antidumping statute. Instead, we will adjust for those expenses under the circumstance-of-sale provision of 19 C.F.R. 353.56(a) and the exporter's sales price offset provision of 19 C.F.R. 353.56(b)(2), as appropriate. Accordingly, in the present case, we deducted post-sale home market movement charges from FMV under the circumstance-of-sale provision of 19 C.F.R. 353.56(a). This adjustment included home market foreign inland freight.

Pursuant to 19 C.F.R. 353.56(a)(2), we made further circumstance-of-sale adjustments, where appropriate, for differences in credit expenses, warranties and product liability expenses between the U.S. and home market. For home market sales with missing shipment and payment dates, we recalculated credit expenses using an average number of credit days. For those sales missing only payment dates, we recalculated credit expenses using the date of our preliminary determination. We deducted home market commissions and added U.S. indirect selling expenses capped by the amount of home market commissions. We added interest revenue, where appropriate.

We also deducted home market packing and added U.S. packing costs, in accordance with section 773(a)(1) of the Act.

We adjusted for VAT in accordance with our practice. (See, the ''United States Price'' section of this notice, above.)

For sales for which Dalmine had with no comparable merchandise sold in the home market for comparison to its U.S. product, we based FMV on CV. We calculated CV based on the sum of the cost of materials, fabrication, general expenses, U.S. packing costs and profit. In accordance with section 773(e)(1)(B)(i) of the Act, we included the greater of respondent's reported general expenses or the statutory minimum of ten percent of the cost of manufacturing (COM), as appropriate. For profit, we used the statutory minimum of eight percent of the sum of COM and general expenses. We made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses and product liability and warranty, pursuant to 19 C.F.R. 353.56(a)(2).

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. *See* 19 C.F.R. 353.60(a).

Verification

As provided in section 776(b) of the Act, we will verify the information used in making our final determination.

PRELIMINARY MARGINS

Manufacturer/producer exporter	Margin percent
Dalmine S.p.A.	0.28 *de minimis.*
All others	0.28 *de minimis.*

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether imports of the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of the preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 C.F.R. 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than March 10, 1995, and rebuttal briefs no later than March 15, 1995. In accordance with 19 C.F.R. 353.38(b), we will hold a public hearing, if requested, to give interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on March 20, 1995, at 2:00 p.m., at the U.S. Department of Commerce, Room 1414, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, within ten days of the publication of this notice in the **Federal Register**. Request should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 C.F.R. 353.38(b), oral presentation will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)) and 19 C.F.R. 353.15(a)(4).

Dated: January 19, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–2108 Filed 1–26–95; 8:45 am]

BILLING CODE 3510–DS–P

U.S. Automotive Parts Advisory Committee; Closed Meeting

AGENCY: International Trade Administration, Commerce.

ACTION: Closed meeting of U.S. Automotive Parts Advisory Committee.

SUMMARY: The U.S. Automotive Parts Advisory Committee (the ''Committee'') advises U.S. Government officials on matters relating to the implementation of the Fair Trade in Auto Parts Act of 1988. The Committee: (1) Reports annually to the Secretary of Commerce on barriers to sales of U.S.-made auto parts and accessories in Japanese markets; (2) assists the Secretary in reporting to the Congress on the progress of sales of U.S.-made auto parts in Japanese markets, including the formation of long-term supplier relationships; (3) reviews and considers data collected on sales of U.S.-made auto parts to Japanese markets; (4) advises the Secretary during consultations with the Government of Japan on these issues; and (5) assists in establishing priorities for the Department's initiatives to increase U.S.-made auto parts sales to Japanese markets, and otherwise provide assistance and direction to the Secretary in carrying out these initiatives. At the meeting, committee members will receive briefings on the status of ongoing consultations with the Government of Japan and will discuss specific trade and sales expansion programs related to U.S.-Japan automotive parts policy.

DATE AND LOCATION: The meeting will be held on Thursday, February 9, 1995 from 11:00 a.m. to 2:30 p.m. at the U.S. Department of Commerce in Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Reck, Office of Automotive Affairs, Trade Development, Main Commerce, Room 4036, Washington, D.C. 20230, telephone: (202) 482–1418.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel formally determined on July 5, 1994, pursuant to Section 10(d) of the Federal Advisory Act, as amended, that the series of meetings or portions of meetings of the Committee and of any subcommittee thereof, dealing with privileged or confidential commercial information may be exempt from the provisions of the Act relating to open meeting and public participation therein because these items are concerned with matters that are within the purview of 5 U.S.C. 552b(c)(4) and (9)(B). A copy of the Notice of Determination is available for public inspection and copying in the Department of Commerce Records Inspection Facility, Room 6020, Main Commerce.

Dated: January 23, 1995.

Henry P. Misisco,

Director, Office of Automotive Affairs.

[FR Doc. 95–2125 Filed 1–26–95; 8:45 am]

BILLING CODE 3510–DR–P

National Institute of Standards and Technology

[Docket No. 940541–4339]

RIN 0693–AB30

Approval of Federal Information Processing Standards Publication 153–1, Programmer's Hierarchical Interactive Graphics System (PHIGS)

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: The purpose of this notice is to announce that the Secretary of Commerce has approved a revised standard, which will be published as FIPS Publication 153–1, Programmer's Hierarchical Interactive Graphics System (PHIGS).

SUMMARY: On June 17, 1994 (59 FR 31209–31214), notice was published in the **Federal Register** that a revision to Federal Information Processing Standard 153, Programmer's Hierarchical Interactive Graphics System (PHIGS) was being proposed for Federal use.

The written comments submitted by interested parties and other material available to the Department relevant to the revised standard was reviewed by NIST. On the basis of this review, NIST recommended that the Secretary approve the revised standard as a Federal Information Processing Standards Publication, and prepared a detailed justification document for the Secretary's review in support of that recommendation.

The detailed justification document which was presented to the Secretary is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW, Washington, DC 20230.

This FIPS contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section which deals with the technical requirements of the standard. Only the announcement section of the standard is provided in this notice.

EFFECTIVE DATE: This revised standard becomes effective August 1, 1995.

ADDRESSES: Interested parties may purchase copies of this revised standard, including the technical specifications section, from the National Technical Information Service (NTIS). Specific ordering information from NTIS for this standard is set out in the Where to Obtain Copies Section of the announcement section of the standard.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin G. Brady, telephone (301) 975–3644, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Dated: January 18, 1995.

Samuel Kramer,

Associate Director.

Federal Information Processing Standards Publication 153–1

(date)

Announcing the Standard for Programmer's Hierarchical Interactive Graphics System (PHIGS)

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100–235.

1. Name of Standard. Programmer's Hierarchical Interactive Graphics System (PHIGS) (FIPS PUB 153–1).

2. Category of Standard. Software Standard, Graphics.

3. Explanation. This publication is a revision of FIPS PUB 153 and supersedes that document in its entirety. This revision provides a substantial, upward-compatible enhancement of the basic PHIGS functionality known as Plus Lumiere and Surfaces, PHIGS PLUS (ANSI/ISO 9592.1a,2a,3a,4:1992). PHIGS PLUS adds facilities for the specification of curved lines, curved and faceted surfaces, lighting and shading, and adds a mechanism for color specification to allow non-indexed color specification. Amendments to each part of the PHIGS specification detail revisions required by PHIGS PLUS. Also, each language binding of PHIGS has been amended as a result of PHIGS PLUS. The specifications and amendments that comprise the complete PHIGS standard as a result of this revision are detailed in the Specification section of this document.

In addition this revision adds a requirement for validation of PHIGS implementations using either FORTRAN or C bindings. However,

validation is currently limited to basic PHIGS functionality, and therefore does not include the new functionality of PHIGS PLUS added by this revision.

FIPS 153–1 adopts the American National Standard Programmer's Hierarchical Interactive Graphics System, ANSI/ISO 9592.1–3:1989, and ANSI/ISO 9592.1a,2a,3a,4:1992, and 9593.1:1990, 9593.3:1990, 9593.4:1991, as a Federal Information Processing Standard (FIPS). This standard specifies the control and data interchange between an application program and its graphic support system. It provides a set of functions and programming language bindings for the definition, display and modification of geometrically related objects, graphical data, and the relationships between the graphical data. The purpose of the standard is to promote portability of graphics application programs between different installations. The standard is for use by implementors as the reference authority in developing graphics software systems; and by other computer professionals who need to know the precise syntactic and semantic rules of the standard.

4. Approving Authority. Secretary of Commerce.

5. Maintenance Agency. U.S. Department of Commerce, National Institute of Standards and Technology (NIST), Computer Systems Laboratory (CSL).

6. Cross Index.

a. ANSI/ISO 9592.1:1989, Information Processing Systems—Computer Graphics—Programmer's Hierarchical Interactive Graphics System (PHIGS), Part 1, Functional Description.

b. ANSI/ISO 9592.1a:1992, Amendment 1, Information Processing Systems—Computer Graphics—Programmer's Hierarchical Interactive Graphics System (PHIGS), Part 1, Functional Description.

c. ANSI/ISO 9592.2:1989, Information Processing Systems—Computer Graphics—Programmer's Hierarchical Interactive Graphics System (PHIGS), Part 2, Archive File Format.

d. ANSI/ISO 9592.2a:1992, Amendment 1, Information Processing Systems—Computer Graphics—Programmer's Hierarchical Interactive Graphics System (PHIGS), Part 2, Archive File Format.

e. ANSI/ISO 9592.3:1989, Information Processing Systems—Computer Graphics—Programmer's Hierarchical Interactive Graphics System (PHIGS), Part 3, Clear Text Encoding of Archive File.

f. ANSI/ISO 9592.3a:1992, Amendment 1, Information Processing Systems—Computer Graphics—Programmer's Hierarchical Interactive Graphics System (PHIGS), Part 3, Clear Text Encoding of Archive File.

g. ANSI/ISO 9592.4:1992, Information Processing Systems—Computer Graphics—Programmer's Hierarchical Interactive Graphics System (PHIGS), Part 4, Plus Lumiere and Surfaces, PHIGS PLUS.

h. ANSI/ISO 9592.1:1990, Information Processing Systems—Computer Graphics—Programmer's Hierarchical Interactive Graphics System (PHIGS), Language Bindings, FORTRAN.

i. ISO/IEC 9593.1:1990 Tech. Corrigendum, Programmer's Hierarchical Interactive Graphics System (PHIGS), Language Bindings, FORTRAN.

j. ANSI/ISO 9593.3:1990, Information Processing Systems—Computer Graphics—Programmer's Hierarchical Interactive Graphics System (PHIGS), Language Bindings, Ada.

k. ISO/IEC 9593.3:1990, Tech. Corrigendum, Programmer's Hierarchical Interactive Graphics System (PHIGS) Language Bindings, Ada.

l. ANSI/ISO 9593.4:1991, Information Processing Systems—Computer Graphics—Programmer's Hierarchical Interactive Graphics System (PHIGS), Language Bindings, C.

7. Related Documents.

a. Federal Information Resources Management Regulations (FIRMR) subpart 201.20.303, Standards, and subpart 201.39.1002, Federal Standards.

b. Federal ADP and Telecommunications Standards Index, U.S. General Services Administration, Information Resources Management Service, (updated periodically).

c. NIST, Validated Products List: Programming Languages, Database Language SQL, Graphics, GOSIP, POSIX, Security, Published quarterly and available by subscription from the National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, VA 22161.

d. FIPS PUB 69–1, Programming Language FORTRAN, adopts ANSI X3.9–1978/R1989.

e. FIPS PUB 119, Programming Language Ada, adopts ANSI/MIL–STD–1815A–1983.

f. FIPS PUB 120–1, Graphical Kernel System (GKS), adopts ANSI X3.124–1985.

g. FIPS PUB 128–1, Computer Graphics Metafile (CGM), adopts ANSI/ISO 8632:1992.

h. FIPS PUB 160, Programming Language C, adopts ANSI/ISO 9899:1992.

i. ANSI/ISO 8632:1992, Information Processing Systems—Computer Graphics Metafile for the Storage and Transfer of Picture Description Information (Part 1: Functional Specifications; Part 2: Character Encoding; Part 3: Binary Encoding; Part 4: Clear Text Encoding).

j. ISO/IEC 646:1991, Information Processing—7-Bit Coded Character Set for Information Interchange.

k. ISO 2022:1986, Information Processing—ISO 7-Bit and 8-Bit Coded Character Sets—Code Extension Techniques.

l. ISO 2382/13:1984, Data Processing—Vocabulary—Part 13: Computer Graphics.

m. ISO 6093:1985, Information Processing—Representation of Numeric Values in Character Strings for Information Interchange.

n. ISO 7942:1985, Information Processing Systems—Computer Graphics—Functional Specification of the Graphical Kernel System (GKS).

o. ISO 7942/Amendment 1:1991, Computer Graphics—Graphical Kernel Systems (GKS) Functional Descriptions.

p. ISO 8805:1988, Information Processing—Computer Graphics—Graphical Kernel System (GKS–3D) Extensions Functional Description.

8. Objectives. The primary objectives of this standard are:

—To allow very highly interactive graphics application programs using 2D or 3D hierarchically structured graphics data to be easily transported between installations. This will reduce costs associated with the transfer of programs among different computers and graphics devices, including replacement devices.

—To aid the understanding and use of dynamic hierarchical graphics methods by application programmers.

—To aid manufacturers of graphics equipment by serving as a guideline for identifying useful combinations of graphics capabilities in a device.

—To encourage more effective utilization and management of graphics application programmers by ensuring that skills acquired on one job are transportable to other jobs, thereby reducing the cost of graphics programmer retraining.

—To aid graphics application programmers in understanding and using graphics methods by specifying well-defined functions and names. This will avoid the confusion of incompatibility common with operating systems and programming languages.

9. Applicability. PHIGS is one of the computer graphics standards (Appendix A discusses the family of computer graphics standards) provided for use by

all Federal departments and agencies. These graphics standards should be used for all computer graphics applications and programs that are either developed or acquired for government use.

9.1 The FIPS for PHIGS is intended for use in computer graphics applications that are either developed or acquired for government use. It is specifically designed to meet the performance requirements of such demanding applications as Computer Aided Design/Computer Aided Engineering/Computer Aided Manufacturing, command and control, molecular modelling, simulation and process control. It emphasizes the support of applications needing a highly dynamic, highly interactive operator interface and expecting rapid screen update of complex images to be performed by the display system. The PHIGS PLUS functionality is designed to support graphics applications requiring lighting and shading, curved lines, curved and facetted surfaces, and non-indexed color specification.

9.2 The use of this standard is compulsory and binding when one or more of the following situations exist:

—The graphics application is very highly interactive, or contains hierarchically structured graphics data, or requires rapid modification of 2D or 3D graphics data and the relationships among the data.

—It is anticipated that the life of the graphics program will be longer than the life of the presently utilized graphics equipment.

—The graphics application or program is under constant review for updating of the specifications, and changes may result frequently.

—The graphics application is being designed and programmed centrally for a decentralized system that employs computers of different makes and models and different graphics devices.

—The graphics program will or might be run on equipment other than that for which the program is initially written.

—The graphics program is to be understood and maintained by programmers other than the original ones.

—The graphics program is or is likely to be used by organizations outside the Federal government (i.e., State and local governments, and others).

9.3 Nonstandard features of implementations of PHIGS should be used only when the needed operation or function cannot reasonably be implemented with the standard features alone. Although nonstandard features can be very useful, it should be recognized that the use of these or any other nonstandard elements may make the interchange of graphics programs and future conversion more difficult and costly.

10. Specifications. American National Standard Programmer's Hierarchical Interactive Graphics System, ANSI/ISO 9592.1–3:1989 and ANSI/ISO 9592.1a,2a,3a,4:1992, define the scope of the specifications, the syntax and semantics of the PHIGS elements and requirements for conforming implementations. All of these specifications apply to Federal Government implementations of this standard.

ANSI/ISO 9592.1–3:1989 and ANSI/ISO 9592.1a,2a,3a,4:1992 define a language independent nucleus of a graphics system for integration into a programming language. Thus, it is embedded in a language layer obeying the particular conventions of the language. FIPS 153–1 is therefore divided into two parts. Part 1 represents the functional aspects of PHIGS. Part 1 consists of the following:

(1) Functional description (ANSI/ISO 9592.1:1989) and (ANSI/ISO 9592.1a:1992, Amendment 1)

The functional description of PHIGS provides a set of functions for the definition, display and modification of 2D or 3D graphical data. It also provides for the definition, display and manipulation of geometrically related objects, along with the modification of graphics data and the relationships between that graphical data.

(2) Archive file format (ANSI/ISO 9592.2:1989) and (ANSI/ISO 9592.2a:1992, Amendment 1)

The archive file provides a file format suitable for the storage and retrieval of PHIGS structures and structure network definitions. It allows structure definitions to be stored in an organized way on a graphical software system. And, facilitates transfer of structure definitions between different graphical software systems.

(3) Clear-text encoding (ANSI/ISO 9592.3:1989) and (ANSI/ISO 9592.3a:1992, Amendment 1)

The clear-text encoding provides a representative of the archive file syntax that is easy to type, edit and read. The file is human-readable (allows editing), human friendly (easy and natural to read) and machine readable (parsable by software).

(4) Plus Lumiere and Surfaces, PHIGS PLUS (ANSI/ISO 9592.4:1992)

The Programmer's Hierarchical Interactive Graphics System (PHIGS) Plus Lumiere and Surfaces (PHIGS PLUS) extends the basic PHIGS functionality by adding facilities for the specification of curved lines, curved and faceted surfaces, lighting and other effects such as depth modulation.

Part 2 of FIPS 153–1 consists of the bindings of PHIGS and PHIGS PLUS functions to actual programming languages, defined in ANSI/ISO 9593:1990. These bindings are developed in cooperation with the voluntary standards committees of the various languages. The following bindings currently exist, and form part 2 of FIPS 153–1:

—The FORTRAN Language binding for PHIGS (ANSI/ISO 9593.1:1990);

—The ADA Language binding for PHIGS (ANSI/ISO 9593.3:1990);

—The C Language binding for PHIGS (ANSI/ISO 9593.4:1991).

Subsequent language bindings, including those for PHIGS PLUS, will be added periodically as they become available. As these bindings are approved by ANSI, each language binding will become part of this standard.

11. Implementation. Implementation of this standard involves four areas of consideration: the effective date, acquisition of PHIGS software system implementations, interpretations of PHIGS implementations, and validation of PHIGS implementations.

11.1 Effective Date. This revised standard is effective August 1, 1995. Requirements for the use of basic PHIGS functionality (defined in ANSI/ISO 9592.1–3:1989 and ANSI/ISO 9593.1:1990, 9593.3:1990, 9593.4:1991) are unchanged and continue in effect. Validation of PHIGS implementations is required after the effective date in accordance with Section 11.4.

11.2 Acquisition of Implementations. Conformance to FIPS for PHIGS is required whether PHIGS toolbox packages are developed internally, acquired as part of an ADP system procurement, acquired by separate procurement, used under an ADP leasing arrangement, or specified for use in contracts for programming services. Recommended terminology for procurement of FIPS for PHIGS is contained in the U.S. General Services Administration publication Federal ADP & Telecommunications Standard Index, Chapter 4 Part 1.

11.3 Interpretation of this FIPS. NIST provides for the resolution of questions regarding FIPS for PHIGS specifications and requirements, and issues official interpretations as needed. Procedures for interpretations are specified in FIPS PUB 29–3. All questions about the interpretation of FIPS for PHIGS should be addressed to:

Director, Computer Systems Laboratory (CSL), Attn: PHIGS Interpretation, National Institute of Standards and Technology, Gaithersburg, MD 20899, Telephone: (301) 975–3265.

11.4 Validation of PHIGS Implementations. Implementations of FIPS for PHIGS using either FORTRAN or C bindings shall be validated in accordance with NIST Computer Systems Laboratory (CSL) validation procedures for FIPS for PHIGS. Recommended procurement terminology for validation of FIPS for PHIGS is contained in the *U.S. General Services Administration publication Federal ADP & Telecommunications Standards Index*, Chapter 4 Part 2. This GSA publication provides terminology for three validation options: Delayed Validation, Prior Validation Testing, and Prior Validation. The agency shall select the appropriate validation option. The agency is advised to refer to the NIST publication *Validated Products List* for information about the validation status of PHIGS products. This information may be used to specify validation time frames that are not unduly restrictive of competition.

The agency shall specify the criteria used to determine whether a Validation Summary Report (VSR) or Certificate is applicable to the hardware/software environment of the PHIGS implementation offered. The criteria for applicability of a VSR or Certificate should be appropriate to the size and timing of the procurement. A large procurement may require that the offered version/release of the PHIGS implementation shall be validated in a specified hardware/software environment and that the validation shall be conducted with specified hardware/software features or parameter settings; e.g., the same parameter settings to be used in a performance benchmark. An agency with a single-license procurement may review the *Validated Products List* to determine the applicability of existing VSRs or Certificates to the agency's hardware/software environment.

PHIGS implementations using either FORTRAN or C bindings shall be validated using the NIST PHIGS Test Suite, a suite of automated validation tests for PHIGS implementations. The NIST PHIGS Test Suite was first released in July 1990 to help users and vendors determine compliance with FIPS for PHIGS. The most recent version of the test suite will be used for validating conformance of PHIGS implementations after the effective date of FIPS PUB 153–1. The results of validation testing by the PHIGS Testing Service are published on a quarterly basis in the *Validated Products List*, available from the National Technical Information Service (NTIS). See related documents section.

Each release of the test suite has provided additional language bindings and test cases to increase the test suite's coverage of PHIGS functionality. Version 2.1 of the NIST PHIGS Test Suite, released in April 1994, provides testing for PHIGS implementations using either the FORTRAN or C language binding. Version 2.1 does not include tests for the functionality of PHIGS PLUS added by this revision of FIPS of PHIGS.

A PHIGS Test Suite license includes all of the tests described above, documentation, and automatic notifications of approved changes to the PHIGS Test Suite for a six month period. A license for the most recent version of the PHIGS Test Suite is a necessary requirement for an organization that desires to be tested by the NIST PHIGS Testing Service after the effective date of FIPS 153–1.

Current information about the NIST PHIGS Validation Service and validation procedures for FIPS for PHIGS is available from: National Institute of Standards and Technology, Computer Systems Laboratory, Graphics Software Group, Building 225, Room A266, Gaithersburg, MD 20899, (301) 975–3265.

12. Waivers. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, United States Code.

Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Governmentwide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis upon which the agency head made the required findings(s). A copy of each such decision, with procurement sensitive or classified portions clearly identifed, shall be sent to: National Institute of Standards and Technology; Attn: FIPS Waiver Decisions, Technology Building, Room B–154; Gaithersburg, MD 20899. In addition notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the Federal Register.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the *Commerce Business Daily* as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. Sec. 552(b), shall be part of the procurement documentation and retained by the agency.

13. Where to Obtain Copies. Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specifications document is by arrangement with the American National Standards Institute. When ordering, refer to Federal Information Processing Standards Publication 153–1 (FIPSPUB153–1) and title. Payment may be made by check, money order, or deposit account.

Appendix A—The Family of Graphics Standards

The following computer graphics standards are now available to address the needs of government applications in creating, modifying, manipulating, and exchanging computer-generated pictures:

- FIPS PUB 120–1, the Graphical Kernel System (GKS), which adopts ANSI X3.124–1985;
- FIPS PUB 153–1, the Programmer's Hierarchical Interactive Graphics System (PHIGS), which adopts ANSI/ISO 9592–1989;
- FIPS PUB 128–1, the Computer Graphics Metafile (CGM), which adopts ANSI/ISO 8632–1992 and
- FIPS PUB 177, the Initial Graphics Exchange Specification (IGES), which adopts ASME/ANSI Y14.26M–1989.

In addition, the Computer Graphics Interface (CGI) has recently become an International standard, and is expected to be issued as a FIPS.

These standards fall into two categories: Application Programmer's Interface (API) standards, and Interoperability standards. The goal of API standards is to enhance the portability of graphics programs (and programmers) between installations and environments. The goal of Interoperability standards is to enable graphics data to be exchanged successfully between graphics systems and devices.

Figure 1 is a very simple reference model of a computer graphics operating environment. The model emphasizes that a graphics application program interacts with physical devices and human operators via a computer graphics environment. Figure 1 also shows that the application may receive information from an external database.

The output of the graphics program, as shown in Figure 1, is directed to a virtual graphics device (i.e., Virtual Device Interface or VDI) rather than directly to a physical device. A Device Driver provides an interface, implemented in either hardware or software, for translating virtual device commands to commands understood by a particular physical device. By substituting one device driver for another, an application can run on a different physical device. This device independence is a central concept of this graphics reference model.

In Figure 1, the API standards reside in the box labelled the Device Independent Graphics Package. Interoperability standards are related to the boxes in Figure 1 labelled Metafile, Database and Virtual Device Interface. Figure 2 depicts the various graphics standards associated with the general model shown in Figure 1. These are discussed below.

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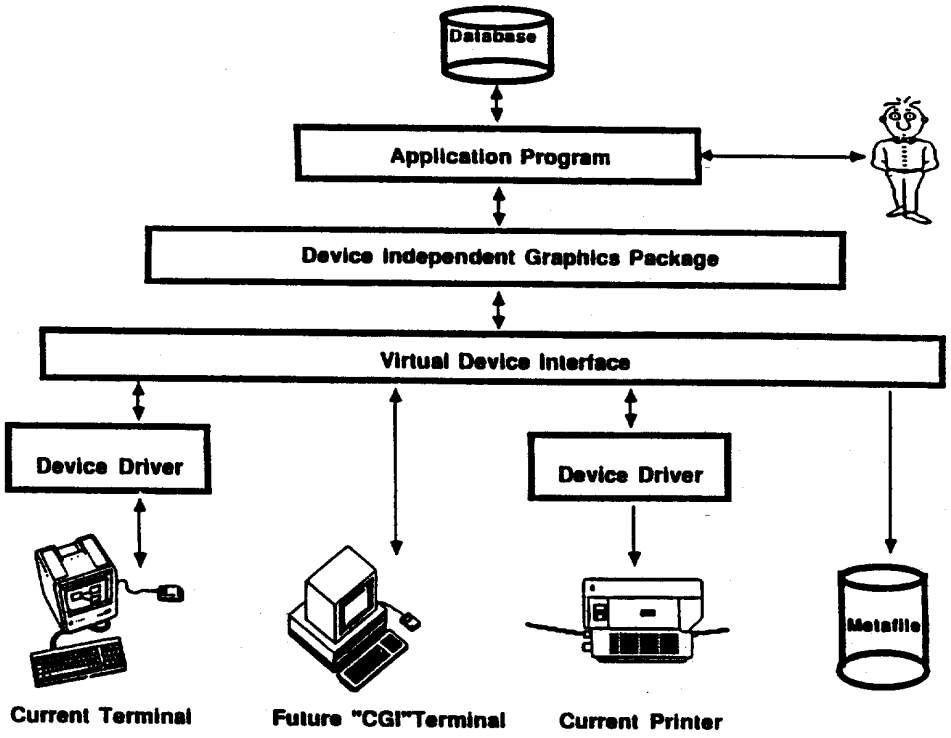

Figure 1. *Computer Graphics Reference Model*

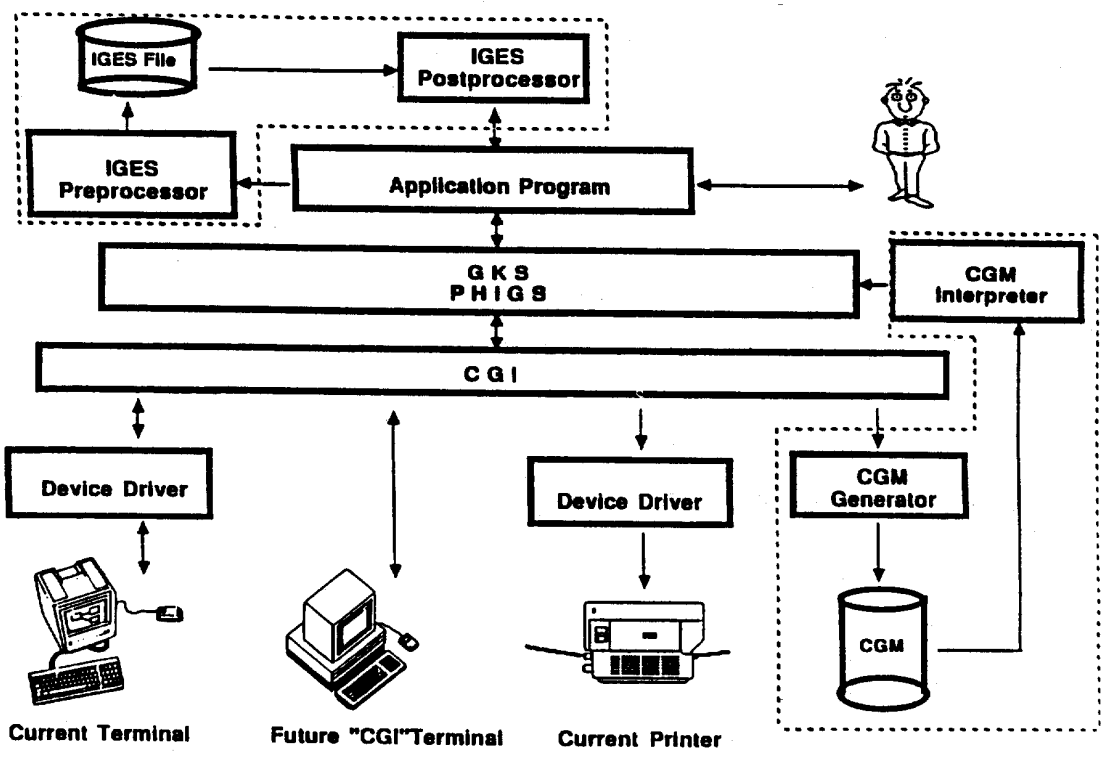

Figure 2. *Standards in the Computer Graphics Reference Model*

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Application Programmer's Interface (API) Standards

Standards at the API promote program and programmer portability. A standard at this level specifies a set of operations on a variety of graphics objects. An API standard provides for the portability of applications across a wide range of computer hardware, operating systems, programming languages, and graphics devices. A program written to an API standard at one facility in one environment should be easily transferable to another facility in a different environment. Facility dependencies should be the major area requiring modification.

The specific functions supported by a particular API standard provide certain capabilities. The application programmer, by identifying the capabilities needed, determines the API better suited for the application. As shown in Figure 2, there are currently two graphics API standards, GKS and PHIGS.

GKS provides a functional description of a two-dimensional (2D) graphics interface. It provides the basic graphics support required by a wide variety of application requiring the production of computer-generated pictures. A procedural language binding of a functional standard specifies the exact name for each operation, its parameter sequence, and the data types for the parameters. FORTRAN, Pascal, Ada and C language bindings are parts of GKS.

GKS is suitable for use in graphics programming applications that employ a broad spectrum of graphics, from simple passive graphics output (where pictures are produced solely by output functions without interaction with an operator) to interactive applications; and which control a whole range of graphics devices, including but not limited to vector and raster devices, microfilm recorders, storage displays, refresh displays, and color displays.

PHIGS provides for the definition, display, modification, and manipulation of 2D and graphical data. It provides functionality to support storage of graphics and application data in a hierarchical form. Information may be inserted, changed, and deleted from the hierarchical data storage with the functions provided by PHIGS. Language binding specifications for PHIGS include FORTRAN, C and Ada.

PHIGS is specifically designed to meet the performance requirements of such demanding applications as Computer Aided Design/Computer Aided Engineering/Computer Aided Manufacturing, command and control, molecular modelling, simulation and process control.

Capabilities in PHIGS but not in GKS include: the centralized hierarchical data storage; the dynamic and responsive nature of interactions; the addition of a modeling capability; and support for color models other than Red-Green-Blue (RGB).

Interoperability Standards

Graphics Interoperability standards allow graphical data to be interchanged between graphics devices. As shown in Figure 2, there are three graphics interoperability standards, CGM, (future) CGI, and IGES.

CGM is used for the storage and transfer of picture description information. It enables pictures to be recorded for long term storage, and to be exchanged between graphics devices, systems, and installations. As indicated in Figure 2, the storage mechanism for CGM is in the form of a neutral file format called a metafile. The software which creates the metafile is known as a CGM Generator. The software which reads and displays a CGM metafile is known as an Interpreter.

CGM specifies a semantic interface that describes 2D graphical entities using primitives (like polyline, text, and ellipse) and attributes (like color, line width, interior style, and fonts). CGM is compatible with the specification of 2D elements in GKS. A data encoding specifies the exact sequence of bits used to represent each operation and its parameters. CGM contains three types of data stream encodings (binary, character, and clear text) to provide the implementor choices depending on the particular application.

IGES provides a method for representing and storing geometric, topological, and non-geometric product definition data that is independent of any one system. Where CGM transfers graphical pictures, IGES transfers a graphical database which can be processed to represent a picture. Thus IGES represents more than just purely graphical data. As Figure 2 indicates, the storage mechanism for IGES is in the form of a neutral format that must be translated by a Preprocessor and Postprocessor for conversion between systems. IGES permits the compatible exchange of product definition data used by various computer aided design/computer aided manufacturing (CAD/CAM) systems.

The future CGI standard is designed to specify the exchange of information at the Virtual Device Interface. It will provide an interface between the device independent and device dependent parts of a graphic system. Since CGI contains information at a vitual level, it can be used to create a CGM. A CGM can also be output on a CGI device in a straightforward manner.

[FR Doc. 95–2103 Filed 1–26–95; 8:45 am]
BILLING CODE 3510–CN–M

[Docket No. 940386–4338]

RIN 0693–AB22

Approval of Federal Information Processing Standards Publication 172–1, VHSIC Hardware Description Language (VHDL)

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: The purpose of this notice is to announce that the Secretary of Commerce has approved a revised standard, which will be published as FIPS Publication 172–1, VHSIC Hardware Description Language (VHDL). This FIPS adopts language specifications contained in ANSI/IEEE 1076–1993, IEEE Standard VHDL Language Reference Manual.

SUMMARY: On April 12, 1994 (59 FR 17336–17338), notice was published in the **Federal Register** that a revision to Federal Information Processing Standard 172, VHSIC Hardware Description Language (VHDL) was being proposed for Federal use.

The written comments submitted by interested parties and other material available to the Department relevant to the revised standard was reviewed by NIST. On the basis of this review, NIST recommended that the Secretary approve the revised standard as a Federal Information Processing Standards Publication, and prepared a detailed justification document for the Secretary's review in support of that recommendation.

The detailed justification document which was presented to the Secretary is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW, Washington, DC 20230.

This FIPS contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section which deals with the technical requirements of the standard. Only the announcement section of the standard is provided in this notice.

EFFECTIVE DATE: This revised standard becomes effective May 1, 1995. Prior to

that date the requirements of FIPS PUB 172 apply to Federal VHDL procurements. This delayed effective date is intended to provide sufficient time for implementors of FIPS PUB 172 to make enhancements necessary for conformance of products to FIPS PUB 172–1.

ADDRESSES: Interested parties may purchase copies of this revised standard, including the technical specifications section, from the National Technical Information Service (NTIS). Specific ordering information from NTIS for this standard is set out in the Where to Obtain Copies Section of the announcement section of the standard.

FOR FURTHER INFORMATION CONTACT: Dr. William H. Dashiell, telephone (301) 975–2490, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Dated: January 18, 1995.

Samuel Kramer,

Associate Director.

Federal Information Processing Standards Publication 172–1

199X Month Day

Announcing the Standard for VHSIC Hardware Description Language (VHDL)

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology (NIST) after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100–235.

1. Name of Standard. VHSIC Hardware Description Language (VHDL) (FIPS PUB 172–1).

2. Category of Standard. Software Standard, hardware Description Language.

3. Explanation. This publication is a revision of FIPS PUB 172 and supersedes that document in its entirety.

This publication announces the adoption of the Federal Information Processing Standard (FIPS) for VHDL. This FIPS adopts American National Standard Hardware Description Language VHDL (ANSI/IEEE 1076–1993) as stipulated in the Specifications Section. The American National Standard specifies the form and establishes the interpretation of programs expressed in VHDL. The purpose of the standard is to promote portability of VHDL programs for use on a variety of data processing systems. The standard is used by implementors as the reference authority in developing compilers, interpreters, analyzers, simulators or other forms of high level language processors, and is used by digital hardware designers, and by other computer professionals who need to know the precise syntactic and semantic rules of the standard and who need to provide specifications for digital hardware descriptions.

4. Approving authority. Secretary of Commerce.

5. Maintenance Agency. U.S. Department of Commerce, National Institute of Standards and Technology (NIST), Computer Systems Laboratory (CSL).

6. Cross Index. ANSI/IEEE 1076–1993, IEEE Standard VHDL Language Reference Manual.

7. Related Documents.

a. Federal Information Resources Management Regulations (FIRMR) subpart 201.20.303, Standards, and subpart 201.39.1002, Federal Standards.

b. Federal ADP and Telecommunications Standards Index, U.S. General Services Administration, Information Resources Management Service, April 1994 (updated periodically).

c. NIST, Validated Products List, NISTIR 5475 (republished quarterly). Available by subscription from the National Technical Information Service (NTIS).

d. FIPS PUB 29–3, Interpretation Procedures for FIPS Software, 29 October 1992.

8. Objectives. Federal standards for high level digital design information and description languages permit Federal departments and agencies to exercise more effective control over the design, production, management, and maintenance of digital electronic systems. The primary objectives of this Federal hardware description language standard are:

—to encourage more effective utilization of design personnel by ensuring that design skills acquired under one job are transportable to other jobs, thereby reducing the cost of programmer retraining;

—to reduce the cost of design by achieving increased designer productivity and design accuracy through the use of formal languages;

—to reduce the overall life cycle cost for digital systems by establishing a common description language for the transfer of digital design information across organizational boundaries;

—to protect the immense investment of digital hardware from obsolescence by insuring to the maximal feasible extent that Federal hardware description language standards are technically sound and that subsequent revisions are compatible with the installed base.

—to reduce Federal inventory of electronic digital replacement parts by describing these parts in a form which enable suppliers to quickly retool manufacturing facilities to meet Federal needs.

—to increase the sources of supplies which can satisfy government requirements for mission specific electronic digital components.

Government-wide attainment of the above objectives depends upon the widespread availability and use of comprehensive and precise standard language specifications.

9. Applicability.

a. Federal standards for hardware description languages are applicable for the design and description of digital systems developed for government use. This standard is suitable for use in the following digital system applications:

—primary design and description of digital systems, subsystems, assemblies, hybrid components, and components;

—formal specifications of digital systems throughout the procurement, contracting and development process;

—test generation for digital systems, subsystems, assemblies, hybrid components, and components;

—re-procurement and redesign of digital systems, subsystems, assemblies, hybrid components, and components.

b. The use of FIPS hardware description languages applies when one or more of the following situations exist:

—When using a formal language for specifying a formal design specification for a complex digital system.

—The digital system is under constant revision during the development process.

—It is desired to have the design understood by multiple groups, or organizations.

—The system under development is to be designed by multiple groups, or organizations.

—Accurate unambiguous specifications are required in the bid and contracting process.

10. Specifications. The Specifications for this standard are the language specifications contained in ANSI/IEEE 1076–1993, IEEE Standard VHDL Language Reference Manual.

This FIPS does not allow conforming implementations to extend the language. A conforming implementation is one that does not allow inclusion of substitute or additional language elements in order to accomplish a

feature of the language as specified in the language standard. A conforming implementation is one which adheres to and implements all of the language specifications contained in ANSI/IEEE 1076–1993 except where the language standard permits deviations and which specifies conspicuously in a separate section in the conforming implementation description all such permitted variations. Also, such conformance shall be with default language processor system option settings.

The ANSI/IEEE 1076–1993 document does not specify limits on the size or complexity of programs, the results when the rules of the standard fail to establish an interpretation, the means of supervisory control programs, or the means of transforming programs for processing.

11. Implementation. The implementation of this standard involves three areas of consideration: acquisition of VHDL processors, interpretation of FIPS VHDL, and validation of VHDL processors.

11.1 Effective Date. This revised standard becomes effective May 1, 1995. VHDL processors acquired for Federal use after the effective date shall implement FIPS Pub 172–1. Prior to that date requirements of FIPS Pub 172 apply to Federal VHDL procurements. This delayed effective date is intended to give implementations that conform to FIPS Pub 172 time to make the enhancements necessary to enable conformance to FIPS Pub 172–1.

A transition period provides time for industry to produce VHDL language processors conforming to the FIPS Pub 172–1. The transition period begins on the effective date and continues for 12 months thereafter. The provisions of FIPS Pub 172–1 apply to orders placed after the effective date of this publication; however a processor conforming to the FIPS Pub 172–1, if available, may be acquired for use prior to the effective date. If, during the transition period, a processor conforming to FIPS Pub 172–1 is not available, a processor conforming to FIPS Pub 172 may be acquired for interim use during the transition period.

11.2 Acquisition of VHDL Processors. Conformance to FIPS VHDL should be considered whether VHDL processors are developed internally, acquired as part of an ADP system procurement, acquired by separate procurement, used under an ADP leasing arrangement, or specified for use in contracts for hardware description services. Recommended terminology for procurement of FIPS VHDL is contained in the U.S. General Services Administration publication Federal ADP & Telecommunications Standards Index, Chapter 4 Part 1.

11.3 Interpretation of FIPS VHDL. The National Institute of Standards and Technology provides for the resolution of questions regarding the specifications and requirements, and issues official interpretations as needed. All questions about the interpretation of this standard should be addressed to: Director, Computer Systems Laboratory, ATTN: FIPS VHDL Interpretation, National Institute of Standards and Technology, Gaithersburg, MD 20899, Voice: 301–975–2490, FAX: 301–948–6213, dashiell@alpha.ncsl.nist.gov e-mail.

11.4 Validation of VHDL Processors: The validation of VHDL processors for conformance to this standard applies when NIST VHDL validation procedures are available. At the present time NIST does not have procedures for validating VHDL processors. NIST is currently investigating methods which may be considered for validating processors for conformance to this standard.

For further information contact: Director, Computer Systems Laboratory, Attn: FIPS VHDL Validation, National Institute of Standards and Technology, Gaithersburg, MD 20899, Voice: 301–975–2490, FAX: 301–948–6213, dashiellalpha.ncsl.nist.gov e-mail.

12. Waivers.

Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Government-wide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive classified portions clearly identified, shall be sent to: National Institute of Standards and Technology, ATTN: FIPS Waiver Decisions, Technology Building, Room B–154, Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the **Federal Register**.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the *Commerce Business Daily* as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. Section 552(b), shall be part of the procurement documentation and retained by the agency.

13. Where to Obtain Copies. Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161, telephone (703) 487–4650. (Sale of the included specifications document is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 172–1 (FIPSPUB172–1), and title. Payment may be made by check, money order, or deposit account.

[FR Doc. 95–2104 Filed 1–26–95; 8:45 am]
BILLING CODE 3510–CN–M

Technology Administration

Metric Policy Interagency Council and Commerce Department; Metric Town Meeting

ACTION: Notice.

SUMMARY: The Department of Commerce and the Interagency Council on Metric Policy will hold a Metric Town Meeting to listen to the concerns and ideas of the private sector for accelerating the transition to the metric system including actions that the Government can take to make it easier for industry to convert to metric use. Written submissions of views are welcome. All, however, are encouraged to participate in person at the Metric Town Meeting to benefit from sharing of views. Those wishing to speck should briefly describe their topic(s) and summarize their

remarks in writing. All written submissions and summaries should be received in the Metric Program Office by February 27, 1995.

DATES: The Metric Town Meeting will be held on Monday, March 27, 1995, and may extend into Tuesday, March 28, to accommodate additional responses and speakers.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology in Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: Organizations and individuals interested in participating should contract the Director, Metric Program, U.S. Department of Commerce, National Institute of Standards and Technology, Gaithersburg, MD 20899 as early as possible but before February 27, 1995. Phone (301–975–3690) and FAX (301–948–1416) messages are welcomed.

SUPPLEMENTARY INFORMATION: World trade is geared toward to metric system of measurement. Industry in the united States is often at a competitive disadvantage when dealing in international markets if its designs or production measurement units differ from those used by the rest of the work. U.S. companies can be excluded from international markets when unable to deliver goods which are built to metric specifications. The Nation can not ignore these globalization pressures.

The North American Free Trade Agreement (NAFTA) and the newly ratified General Agreement on Tariffs and Trade (GATT) have expanded the opportunities for international trade and commerce. To take advantage of those opportunities and to enhance the acceptability of U.S. products, U.S. business must expedite the adoption of the metric system

Under the provisions of the Omnibus Trade and Competitiveness Act of 1988, which establishes the metric system as the preferred system of measurement for trade and commerce, the Federal government is required to assist industry, especially small business, in converting to the metric system. Pursuant to Executive Order 12770, the U.S. Department of Commerce and the Interagency Council on Metric Policy have been charged to explore ways to bring together the government, the private sector and the public to discuss the nest steps in decision-making about metric conversion.

The Department of Commerce and the Interagency Council on Metric Policy will hold a Metric Town Meeting to listen to the concerns and ideas of the private sector for accelerating the transition to the metric system including actions that the Government can take to make it easier for industry to convert to metric system use. Accordingly, the Town Meeting will seek views from businesses, trade and professional groups, educators, and state and local government entities on topics such as:

- How using the metric system contributes to key national goals such as U.S. global competitiveness, technology development and commercialization, enhanced labor skills, and U.S. education reform;
- How the effective implementation of trade agreements (e.g., NAFTA and GATT) will be influenced by industry's use or non-use of metric measures;
- What plans the Federal government and individual agencies should undertake to complete a smooth conversion to the metric system in U.S. trade and commerce;
- How industry and Federal, state, and local governments should inform small and midsized companies and their workers about how their economic prosperity may be tied, even if indirectly, to global markets, and involve them in more positive discussions on metrication;
- Identifying or eliminating Federal regulatory barriers to metrication;
- Identifying outdated Federal standards that may contribute to continued use of non-metric measures;
- How Federal procurement practices should support metrication efforts;
- What public education or awareness strategies government or industry should initiate to accelerate public understanding and acceptance of the transition to the metric system.

(15 U.S.C. 205(b) and (c))

Dated: January 23, 1995

Mary L. Good,

Under Secretary for Technology.

[FR Doc. 95–2046 Filed 1–26–95; 8:45 am]

BILLING CODE 3510––18–M–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of Bangladesh

January 24, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: February 1, 1995.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Textile Agreement of December 10, 1994 between the Governments of the United States and the People's Republic of Bangladesh establishes limits, pursuant to the Uruguay Round Agreement on Textiles and Clothing (URATC), for the period beginning on January 1, 1995 and extending through December 31, 1995. The limits have been reduced to account for carryforward used and special carryforward used during 1994.

A copy of the bilateral textile agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–1683.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 24, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Uruguay Round Agreement on Textiles and Clothing (URATC); pursuant to the Bilateral Textile Agreement of December 10, 1994 between the Governments of the United States and the People's Republic of Bangladesh; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended,

you are directed to prohibit, effective on February 1, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Bangladesh and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995, in excess of the following levels of restraint:

Category	Twelve-month restraint limit [1]
237	309,820 dozen.
331	784,917 dozen pairs.
334	89,644 dozen.
335	169,709 dozen.
336/636	303,700 dozen.
338/339	879,784 dozen.
340/640	1,886,237 dozen.
341	1,562,576 dozen.
342/642	285,052 dozen.
347/348	1,482,791 dozen.
351/651	429,372 dozen.
352/652	8,007,120 dozen.
363	16,004,493 numbers.
369–S [2]	1,131,129 kilograms.
634	313,625 dozen.
635	203,191 dozen.
638/639	1,115,728 dozen.
641	654,294 dozen.
645/646	262,016 dozen.
647/648	884,478 dozen.
847	469,625 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 369–S: only HTS number 6307.10.2005.

Imports charged to these category limits for the periods February 1, 1994 through December 31, 1994 and December 1, 1994 through December 31, 1994 (Categories 352/652) shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for those periods have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the URATC and any administrative arrangements notified.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–2102 Filed 1–26–95; 8:45 am]

BILLING CODE 3510–DR–F

Amendment of Export Visa Requirements for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

January 24, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending visa requirements.

EFFECTIVE DATE: February 1, 1995.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The existing export visa arrangement between the Governments of the United States and the People's Republic of Bangladesh is being amended to include the coverage of merged Categories 352/652 for goods produced or manufactured in Bangladesh and exported from Bangladesh on and after February 1, 1995.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 53 FR 46484, published November 17, 1988.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 24, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 14, 1988, by the Chairman, Committee for the Implementation of Textile Agreements. That directive directed you to prohibit entry of certain cotton and man-made fiber textile products, produced or manufactured in Bangladesh for which the Government of the People's Republic of Bangladesh has not issued an appropriate visa.

Effective on February 1, 1995, you are directed to amend further the November 14, 1988 directive to include the coverage of merged Categories 352/652 for goods produced or manufactured in Bangladesh and exported from Bangladesh on and after February 1, 1995. Merchandise in Categories 352/652 may be accompanied by either the appropriate merged categories or the correct category corresponding to the actual shipment.

Merchandise in Categories 352 and 652 which is exported from Bangladesh prior to February 1, 1995 shall not be denied entry if accompanied by a merged category 352/652 visa.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa must be obtained.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–2101 Filed 1–26–95; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: February 27, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodity

Pad, Scouring
7920–00–045–2940
NPA: Beacon Lighthouse, Inc., Wichita Falls, Texas

Services

Grounds Maintenance
(Basewide except Quarters and Common Areas) Fort Sam Houston, Texas
NPA: Goodwill Industries of San Antonio, San Antonio, Texas

Mailroom Operation & Administrative Support, Department of Veterans Affairs Medical Center, 718 Smyth Road, Manchester, New Hampshire
NPA: Easter Seal Society of New Hampshire, Manchester, New Hampshire

Operation of the Postal Service Center, Building 20204 and 926, Kirtland Air Force Base, New Mexico
NPA: RCI, Inc., Albuquerque, New Mexico

Recycling Service, Patrick Air Force Base, Florida
NPA: Brevard Achievement Center, Inc., Rockledge, Florida

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–2084 Filed 1–26–95; 8:45 am]

BILLING CODE 6820–33–P

COMPETITIVENESS POLICY COUNCIL

Meeting

ACTION: Notice of forthcoming meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the Competitiveness Policy Council announces a forthcoming meeting.

Dates: February 3; 9:30 a.m. to 3:00 p.m.

Address: Third Floor, 1726 M Street, NW., Suite 300, Washington, DC 20036.

For further information contact: Howard Rosen, Executive Director, Competitiveness Policy Council, Suite 300, 1726 M Street, NW., Washington, DC 20036, (202) 632–1307.

Supplementary information: The Competitiveness Policy Council (CPC) was established by the Competitiveness Policy Council Act, as contained in the Trade and Competitiveness Act of 1988, Public Law 100–418, sections 5201–5210, as amended by the Customs and Trade Act of 1990, Public Law 101–382, section 133. The CPC is composed of 12 members and is to advise the President and Congress on matters concerning competitiveness of the US economy. The Council's chairman, Dr. C. Fred Bergsten, will chair the meeting.

The meeting will be open to the public subject to the seating capacity of the room. Visitors will be requested to sign a visitor's register.

Type of meeting: Open.

Agenda: The Council will discuss its FY 1995 workplan and consider additional business as suggested by its members.

Dated: January 23, 1995.

Dr. C. Fred Bergsten,

Chairman, Competitiveness Policy Council.

[FR Doc. 95–2069 Filed 1–26–95; 8:45 am]

BILLING CODE 4739–54–M

DEPARTMENT OF EDUCATION

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of arbitration panel decision under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that on May 1, 1992, an arbitration panel rendered a decision in the matter of *Garnette Laurell* v. *Michigan Commission for the Blind, (Docket No. R–S/90–1*). This panel was convened by the Secretary of Education pursuant to 20 U.S.C. 107d–1(a), upon receipt of a complaint filed by petitioner, Garnette Laurell, on February 12, 1990. The Randolph-Sheppard Act (the Act) provides a priority for blind individuals to operate vending facilities on Federal property. Under this section of the Act, a blind licensee, dissatisfied with the State's operation or administration of the vending facility program authorized under the Act, may request a full evidentiary fair hearing from the State licensing agency (SLA). If the licensee is dissatisfied with the results of the hearing, the licensee may complain to the Secretary of Education, who then is required to convene an arbitration panel to resolve the dispute.

FOR FURTHER INFORMATION CONTACT: A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 600 Independence Avenue, SW., room 3230, Switzer Building, Washington, DC 20202–2738. Telephone: (202) 205–9317. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8298.

SUPPLEMENTARY INFORMATION: Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d–2(c)), the Secretary publishes a synopsis of an arbitration panel decision in the **Federal Register**.

Background

The complainant, Garnette Laurell, is a blind vendor licensed by the respondent, the Michigan Commission for the Blind, pursuant to the Randolph-Sheppard Act, 20 U.S.C. 107 *et seq.* The Michigan Commission for the Blind (the Commission) is the SLA responsible for the Michigan vending facility program for blind individuals.

In late 1985, the Commission located an opportunity to take over a canteen facility at the United States Post Office Bulk Mail Center in Allen Park, Michigan. The Postal Service stipulated that the SLA needed to begin operating the vending facility within 30 days of its offer or the location would be open to contracting. The SLA determined that it was necessary to act quickly to get one of its licensees into the facility and activated its bidding procedures. The complainant, Garnette Laurell, was the successful bidder and began operating a vending facility at the Bulk Mail Center on January 6, 1986.

The Commission provided Ms. Laurell with a microwave, money changing equipment, and an initial merchandise inventory. However, as a condition of managing the facility, the complainant was required by the SLA to enter into a lease agreement with Canteen Food and Vending Service, the

predecessor operator, for 10 pieces of vending equipment necessary to the operation of the facility. The lease required monthly payments of $489.00 for 60 months. In 1988 the monthly payments were increased to $514.00 with the lease arrangement ending in May 1989, when the equipment was purchased by the SLA. The lease payments totaled $19,568.00. During the same period of time that complainant was remitting lease payments, Ms. Laurell also paid the SLA the uniform set-aside fee of 10 percent of net proceeds.

On March 28, 1989, complainant filed a request for an evidentiary hearing with the SLA, stating that she had been unjustly required to pay a lease fee for her equipment and asking for full reimbursement. The hearing was held on August 22, 1989, before a Michigan Department of Labor Administrative Law Judge (ALJ). The ALJ issued a proposed decision on October 16, 1989, affirming the SLA's actions. The SLA concurred and in a letter to the complainant dated November 9, 1989, declared that the ALJ's decision was final agency action.

Subsequently, Ms. Laurell filed a request with the Secretary of Education to convene an arbitration panel seeking a review of the final action. The arbitration hearing was held on January 6, 1992. It was agreed between the parties that the following issues would be reviewed: (1) Did the Commission have a legal responsibility to provide Garnette Laurell with the equipment that she was required to lease at the Allen Park Bulk Mail Center? (2) If so, was the Commission legally obligated to reimburse complainant for the cost of that leasing? (3) If so, was the Commission legally obligated to pay interest on the reimbursed funds? and (4) Was the Commission obligated to pay complainant's attorney's fees?

Arbitration Panel Decision

The arbitration panel ruled that the Commission had a legal responsibility to provide equipment to complainant pursuant to the Act, 20 U.S.C. 107b, which states in relevant part that the SLA is required ''to provide for each license blind person such vending facility equipment * * * as may be necessary.'' This requirement is also reflected in the Federal regulations in 34 CFR 395.3(a)(5) and 395.6(a). In addition, the SLA's statute (Michigan, Section 4(2) of Act No. 260 of the Michigan Public Acts of 1978, (MCL 393.351)) states that the Commission ''shall * * * (1) Aid individual visually handicapped persons or groups of visually handicapped persons to engage in gainful occupations by furnishing * * * equipment * * * as necessary to encourage and equip them to reach objectives established with them by the Commission.''

However, the panel majority concluded that there is a distinction between providing equipment and providing it without cost.While section 107b of the Act requires SLAs to agree to provide the necessary equipment, it expressly permits ownership interest in the equipment to reside with either the SLA or the blind licensee. The panel concluded that the Act did not contemplate that the blind licensee would acquire that ownership through a gift from the State agency, because the Act expressly anticipates that the State agency will pay the blind licensee fair value in the event that the SLA chooses to exercise its right to acquire the ownership interest. Further, § 395.3(a)(5) of the Federal regulations suggests that the obligation to provide equipment can be satisfied by ''making suitable vending facility equipment *available* to a vendor'' (emphasis added).

The panel reasoned that this also could include providing equipment to a vendor by means of a ''lease'' arrangement. To support this concept the panel also considered Act No. 260 of the Michigan Public Acts of 1978. R 393.105 of the Michigan Rules states that the Michigan Commission for the Blind shall furnish equipment to the vendor. Specifically, the panel considered language in R 393.101(k)(viii), which gives the definition of operating costs to vendors. The definition states that operating costs may include renting or leasing Commission-approved equipment or location. Therefore, the panel concluded that it is quite unlikely that Michigan intended its requirement to preclude cost to the blind licensee when the Federal authorities did not intend their requirement to preclude cost to the blind licensee.

Regarding the complainant's concern about paying set-aside fees while she was paying lease payments on equipment, the panel determined that section 107b(3) of the Act and 34 CFR 395.9(a) of the Federal regulations indicate that the determination of the reasonableness of a set-aside fee is a function of the Secretary of Education. The Secretary did not make a determination of unreasonableness with respect to the Commission's uniform set-aside fee. Furthermore, the panel concluded that while complainant's set-aside fee was the uniform 10 percent of net proceeds, the dollar amount of her set-aside fee was in fact somewhat reduced as a result of the deduction of her lease payments in the calculation of her net proceeds.

Accordingly, the panel found that the Commission did not have a legal responsibility to provide the complainant, without cost to her, the equipment that she was required to lease at the Bulk Mail Center in Allen Park, Michigan, during the period of January 1986 to May 1989 and that, therefore, it is not legally obligated to reimburse her for the cost of that leasing.

In addition, the panel found that complainant's requests for interest and attorney's fees were without merit.

One panel member dissented.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

Dated: January 23, 1995.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 95–2066 Filed 1–26–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Withdrawal of Notice of Intent to Prepare Environmental Impact Statement for East Fork Poplar Creek Remedial Action Project at the Oak Ridge Reservation, Oak Ridge, TN

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The U.S. Department of Energy today withdraws its Notice of Intent (53 FR 46648, November 18, 1988) to prepare an Environmental Impact Statement for the East Fork Poplar Creek Remedial Action Project. The Department intends to rely upon the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) process, which will incorporate National Environmental Policy Act (NEPA) values, to document its environmental review of actions to be taken in connection with this project.

FOR FURTHER INFORMATION CONTACT: For further information on the East Fork Poplar Creek Remedial Action Project, please contact:

Mr. Robert C. Sleeman, Director, Environmental Restoration Division, Oak Ridge Operations Office, U.S. Department of Energy, P.O. Box 2001, Oak Ridge, TN 37831, (615) 576–0715

For information on the Department of Energy's NEPA process, please contact:

Ms. Carol Borgstrom, Director, Office of NEPA Oversight, U.S. Department of

Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–4600 or leave a message at (800) 472–2756

SUPPLEMENTARY INFORMATION: The East Fork Poplar Creek Remedial Action Project was initiated under the Resource Conservation and Recovery Act's (RCRA) off-site release provisions. The project was later incorporated into the CERCLA program when the Oak Ridge Reservation was determined to be a National Priorities List site in December 1989.

This project involves an operable unit consisting of 14.2 miles of the lower portion of East Fork Poplar Creek (i.e., the portion of the creek from the point it exits the Y–12 Plant until its confluence with Poplar Creek). The operable unit includes the creek, creek sediments, the soils in the 100-year floodplain surrounding the creek, and the Oak Ridge Sewerline Beltway.

On November 18, 1988, the Department of Energy published in the **Federal Register** a Notice of Intent to prepare an Environmental Impact Statement for the East Fork Poplar Creek Remedial Action Project. At the time of the Notice, it was the Department's policy to integrate the CERCLA and NEPA processes, whenever practicable. Under that policy, the Department intended to prepare an integrated CERCLA/NEPA Remedial Investigation/ Feasibility Study-Environmental Impact Statement for the project. As stated in the Secretary of Energy's June 13, 1994, Policy Statement on NEPA, however, it is now the Department's policy to generally rely on the CERCLA process for the review of actions to be taken under CERCLA, and to incorporate NEPA values (e.g., analysis of cumulative, off-site, ecological, and socioeconomic impacts) in the Department's CERCLA documents to the extent practicable.

To date, the public has been extensively involved in the East Fork Poplar Creek Remedial Action Project. Numerous meetings have been held with private property owners and interested citizens. A property owner workshop and a general public workshop were held on the Remedial Investigation report, and a volunteer 30-person Citizens Working Group formed in June 1993, continues to meet monthly and provides input and suggestions into the decision-making process.

Discussions have been held with the Army Corps of Engineers, the Fish and Wildlife Service, the Environmental Protection Agency, the Tennessee Department of Environment and Conservation, the Citizens Working Group, and other interested parties regarding the Department's intent to rely on the CERCLA process to document its environmental review of actions for this project. In addition, a notice was placed in a local newspaper and letters were sent to approximately 300 stakeholders soliciting input on the proposed withdrawal of the Notice of Intent; no objections were received. Thus, the Department of Energy has decided to rely on the CERCLA process to document its environmental review of actions to be taken under CERCLA for the East Fork Poplar Creek Remedial Action Project, with NEPA values incorporated into the CERCLA process to the extent practicable. Public involvement has been and will continue to be an integral part of the decision-making process for the project.

Copies of documents related to the East Fork Poplar Creek Remedial Action project are on file at, and may be obtained from, the Information Resource Center, 105 Broadway, Oak Ridge, Tennessee 37830.

Issued in Washington, DC, on January 23, 1995.

Thomas P. Grumbly,

Assistant Secretary for Environmental Management.

[FR Doc. 95–2099 Filed 1–26–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. ER94–478–000, et al.]

Medina Power Company, et al.; Electric Rate and Corporate Regulation Filings

January 20, 1995.

Take notice that the following filings have been made with the Commission:

1. Medina Power Company

[Docket No. ER94–478–000]

Take notice that on January 9, 1995, Medina Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: February 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Cincinnati Gas & Electric Company

[Docket No. ER94–1223–000]

Take notice that on January 5, 1995, Cincinnati Gas & Electric Company tendered for filing an amendment in the above-referenced docket.

Comment date: February 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. JEB Corporation

[Docket No. ER94–1432–002]

Take notice that on January 5, 1995, JEB Corporation (JEB), filed certain information as required by the Commission's September 8, 1994, letter order in Docket No. ER94–1432–000. Copies of JEB's informational filing are on file with the Commission and are available for public inspection.

4. Louisville Gas and Electric Company

[Docket No. ER94–1480–000]

Take notice that on December 23, 1994, Louisville Gas and Electric Company (LG&E), tendered for filing an amendment to Supplement No. 8 to the Interconnection Agreement between LG&E and East Kentucky Power Cooperative, Inc. (EKPC).

The purpose of this filing is to amend Service Schedule E, Section 3—Compensation. Section 3 is revised to reflect updated pricing and to introduce a tiered pricing structure related to individual generating units.

A copy of the filing was served upon the Kentucky Public Service Commission.

Comment date: February 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Citizens Utilities Company

[Docket No. ER94–1561–000]

Take notice that on January 17, 1995, Citizens Utilities Company (Citizens), tendered its filing in response to a deficiency letter issued earlier in this proceeding. Citizens characterizes its filing as an amendment to its earlier filing in this docket.

Comment date: February 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Kentucky Utilities Company

[Docket No. ER94–1698–002]

Take notice that on December 30, 1994, Kentucky Utilities Company tendered for filing its compliance filing in the above-referenced docket.

Comment date: February 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. J. Aron & Company

[Docket No. ER95–34–000]

Take notice that on January 11, 1995, J. Aron & Company, tendered for filing an amendment in the above referenced docket.

Comment date: February 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Indianapolis Power & Light Company

[Docket No. ER95–55–000]

Take notice that on January 9, 1995, Indianapolis Power & Light Company tendered for filing an amendment to its previous filing in the above-referenced docket. The amendment consists of a revised Service Schedule submitted in response to a staff request.

IPL requests that the effective date remain sixty (60) days from the original filing date of October 21, 1994.

Copies of this filing were sent to the Indiana Municipal Power Agency and the Indiana Utility Regulatory Commission.

Comment date: February 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Mid-American Resources, Inc.

[Docket No. ER95–78–000]

Take notice that on January 17, 1995, Mid-American Resources, Inc. tendered for filing additional information in the above-referenced docket.

Comment date: February 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (The APS Companies or APS)

[Docket No. ER95–135–000]

Take notice that on December 23, 1994, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (the APS Companies or APS) filed a letter agreeing to conform the Standard Generation Service Rate Schedule filed in this docket to the requirements of Docket No. PL95–1–000 regarding ratemaking procedures for emission allowances. Allegheny Power Service Corporation requests waiver of notice requirements and asks the Commission to honor the January 1, 1995, effective date determined by the date of the original filing.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: February 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Howard Energy Company, Inc.

[Docket No. ER95–252–000]

Take notice that on January 19, 1995, Howard Energy Company, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: February 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Public Service Company of New Hampshire

[Docket No. ER95–366–000]

Take notice that on January 11, 1995, Public Service Company of New Hampshire tendered for filing an amendment in the above-referenced docket.

Comment date: February 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Niagara Mohawk Power Corporation

[Docket No. ER95–392–000]

Take notice that on January 5, 1995, Niagara Mohawk Power Corporation (Niagara), tendered for filing a Service Agreement between Niagara and the City of Jamestown, New York under Niagara's FERC Electric Tariff Original Volume No. 2.

Comment date: February 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. American Electric Power Service Corporation

[Docket No. ER95–394–000]

Take notice that on January 11, 1995, the American Electric Power Service Corporation (AEPSC), amended its filing in the above referenced Docket to request the earliest permissible effective date.

A copy of the filing was served upon the parties affected by the amendment and the affected state regulatory commissions for the states of Ohio, Indiana, Michigan, Virginia, West Virginia, Kentucky, and Tennessee.

Comment date: February 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Southern California Edison Company

[Docket No. ER95–409–000]

Take notice that on January 10, 1995, Southern California Edison Company, tendered for filing a Notice of Cancellation of FERC Rate Schedule No. 246.3 and FERC Rate Schedule No. 246.4 and supplements thereto.

Comment date: February 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Southern California Edison Company

[Docket No. ER95–410–000]

Take notice that on January 10, 1995, Southern California Edison Company tendered for filing a Notice of Cancellation of FERC Rate Schedule No. 246.22, FERC Rate Schedule No. 246.23 and FERC Rate Schedule No. 246.24 and supplements thereto.

Comment date: February 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. Dayton Power and Light Company

[Docket No. ER95–413–000]

Take notice that Dayton Power and Light Company (Dayton), tendered for filing on January 10, 1995, executed Power and Transmission Agreement (PTA) between Dayton and The City of Celina, Ohio (Celina).

Pursuant to Rate Schedule A through C attached to the PTA, DP&L will provide to Celina, on an unbundled basis, firm and limited term firm power supplies and firm transmission service, all subject to flexible provisions and fixed long-term prices. Dayton and Celina are currently parties to a Service Agreement for Partial Requirements Service pursuant to Dayton's FERC Electric Tariff, Original Volume No. 2, filed pursuant to and governed by the Settlement Agreement accepted for filing in Docket No. ER83–333–000. The Agreements will replace the existing Partial Requirements Service Agreements in place for Celina. Dayton and Municipals request that this agreement be made effective for the billing month of March 1995.

A copy of the filing was served upon The City of Celina, Ohio and The Public Utilities Commission of Ohio.

Comment date: February 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

18. Rochester Gas and Electric Company

[Docket No. ER95–419–000]

Take notice that on January 12, 1995, Rochester Gas and Electric Company (RG&E), tendered for filing a Service Agreement between RG&E and Louis Dreyfus Electric Power Inc.

Comment date: February 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance

with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–2021 Filed 1–26–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. EL93–53–000, et al.]

Southwestern Public Service Company, et al.; Electric Rate and Corporate Regulation Filings

January 23, 1995.

Take notice that the following filings have been made with the Commission:

1. Southwestern Public Service Company

[Docket No. EL93–53–000]

Take notice that on December 12, 1994, Southwestern Public Service Company tendered for filing additional information in the above-referenced docket.

Comment date: February 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Indianapolis Power & Light Company

[Docket No. ER94–1433–000]

Take notice that on January 13, 1995, Indianapolis Power & Light Company tendered for filing an amendment in the above-referenced docket.

Comment date: February 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. New England Power Company

[Docket No. ER95–102–000]

Take notice that New England Power Company (NEP), on December 28, 1994, tendered for filing a clarification to the filing letter initially tendered in this docket.

Comment date: February 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Pennsylvania Power Company

[Docket No. ER95–279–000]

Take notice that on January 12, 1995, Pennsylvania Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: February 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Westcoast Power Marketing Inc.

[Docket No. ER95–378–000]

Take notice that on January 3, 1995, Westcoast Power Marketing Inc. (Westcoast Power) tendered for filing a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1.

Westcoast Power states that it intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where Westcoast Power sells electric energy, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party. Westcoast Power states that neither it nor any of its affiliates is in the business of generating, transmitting or distributing electric power in the United States. Westcoast Power further states that certain of its affiliates are engaged in electric transmission and independent power generation projects in Canada. Affiliates of Westcoast Power are also engaged in the transportation, distribution and marketing of natural gas, it is stated.

Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices. Rate Schedule No. 1 also provides that no sales may be made to affiliates.

Comment date: February 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. The Toledo Edison Company

[Docket No. ER95–405–000]

Take notice that on January 9, 1995, The Toledo Edison Company (Toledo Edison) tendered for filing a revision to the Resale Service Rate Agreement between Toledo Edison and Southeastern Michigan Rural Electric Cooperative (Southeastern Michigan), which was effective for service rendered by Toledo Edison to Southeastern Michigan from January 1, 1995.

Toledo Edison states that Southeastern Michigan presently purchases firm power under its FERC Electric Tariff No. 33 which terminates under its own provision on December 31, 1994. Under the Resale Service Rate Agreement, Toledo Edison will continue to sell to Southeastern Michigan all of the power and energy needed by Southeastern Michigan to serve its requirements.

Toledo Edison states that the rate set forth in the Resale Service Rate Agreement is a negotiated rate between Toledo Edison and Southeastern Michigan. Toledo Edison states that the Resale Service Rate Agreement will help Southeastern Michigan become competitive in its source of power.

Comment date: February 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Cambridge Electric Light Company, Commonwealth Electric Company, New England Power Company

[Docket No. ER95–407–000]

Take notice that on January 9, 1995, Cambridge Electric Light Company, Commonwealth Electric Company and New England Power Company tendered for filing, proposed changes in their respective rate schedules, FERC No. 35, FERC No. 28 and FERC No. 387, to replace a discontinued price index.

Comment date: February 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Gulf States Utilities Company

[Docket No. ER95–408–000]

Take notice that Gulf States Utilities Company (Gulf States), on January 10, 1995, tendered for filing proposed changes in its Power Interconnection Agreement with Cajun Electric Power Cooperative, Inc. (Cajun), Rate Schedule FERC No. 128. Gulf States proposes to add a new Section 5.6 to the interconnection agreement. The proposed change provides that Gulf States may, pursuant to § 35.15 of the Commission's regulations, 18 CFR 35.15, file to cancel service schedules or suspend service to Cajun, in the event Cajun fails to pay any sum due for service.

Comment date: February 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. The Dayton Power and Light Company

[Docket No. ER95–412–000]

Take notice that The Dayton Power and Light Company (Dayton) tendered for filing on January 10, 1995, executed Power Service Agreements (PSA) between Dayton and The Village of Eldorado, The Village of Minster, The City of Tipp City, The Village of Versailles, and The Village of Yellow Springs, Ohio (Municipals).

Pursuant to Rate Schedules A through E attached to the PSA, DP&L will provide to Municipals, on an unbundled basis, long-term firm and short-term interruptible transmission services and a variety of power supply services, all subject to flexible notice and scheduling provisions and fixed long-term prices.

Dayton and Municipals are currently parties to a Service Agreement for partial requirements service pursuant to Dayton's FERC Electric Tariff, Original Volume No. 2, filed pursuant to and governed by the Settlement Agreement accepted for filing in Docket No. ER83–333–000. The Agreements will replace the existing Partial Requirements Service Agreements in place for these municipals. Dayton and Municipals request an effective date of January 1, 1995.

A copy of the filing was served upon The Village of Eldorado, The Village of Minster, The City of Tipp City, The Village of Versailles, and The Village of Yellow Springs, Ohio and The Public Utilities Commission of Ohio.

Comment date: February 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Virginia Electric and Power Company

[Docket No. ER95–417–000]

Take notice that on January 10, 1995, Virginia Electric and Power Company (Virginia Power) tendered for filing a Service Agreement between Louis Dreyfus Electric Power Inc. and Virginia Power, dated January 1, 1995, under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994. Under the tendered Service Agreement Virginia Power agrees to provide services to AES Power, Inc. under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: February 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. San Diego Gas & Electric Company

[Docket No. ER95–418–000]

Take notice that on January 12, 1995, San Diego Gas & Electric Company (SDG&E) tendered for filing a Notice of Cancellation of FERC Rate Schedule No. 84 between SDG&E and the City of Vernon.

Comment date: February 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Rochester Gas and Electric Corporation

[Docket No. ER95–419–000]

Take notice that Rochester Gas and Electric Corporation (RG&E), on January 12, 1995, tendered for filing a Service Agreement for acceptance by the Federal Energy Regulatory Commission (Commission) between RG&E and Louis Dreyfus Electric Power Inc. The terms and conditions of service under this Agreement are made pursuant to RG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER94–1279. RG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: February 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Delmarva Power and Light Company

[Docket No. FA92–39–001]

Take notice that on January 10, 1995, Delmarva Power and Light Company tendered for filing its compliance refund report in the above-referenced docket.

Comment date: February 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–2047 Filed 1–26–95; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 1930–014]

Southern California Edison Company (Kern River No. 1 Hydroelectric Project; Intent to Conduct Environmental Scoping Meetings and Site Visit

January 23, 1995.

The Federal Energy Regulatory Commission (FERC or Commission) has received an application for a new license for the Kern River No. 1 Hydroelectric Project, Project No. 1930–014. The Kern River No. 1 Hydroelectric Project is located on the Kern River, about 17 miles northeast of Bakersfield and 16 miles southwest of Bodfish, in Kern County, California. The project occupies lands within the Sequoia National Forest, administered by the U.S. Forest Service (FS).

The Commission and FS staffs (staff) intend to prepare a joint Environmental Assessment (EA) on this hydroelectric project in accordance with the National Environmental Policy Act.

In the EA, we will consider both site-specific and cumulative environmental impacts of the project and reasonable alternatives, and will include an economic, financial, and engineering analysis.

The draft EA will be issued and circulated for review by all interested parties. All comments filed on the draft EA will be analyzed by the staff and considered in a final EA. The staff's conclusions and recommendations will then be presented for the consideration by the Commission in reaching its final licensing decision.

Scoping Meetings

Staff will hold two scoping meetings. A scoping meeting oriented towards the public will be held on Tuesday, March 7, 1995, at 6:30 PM, at the City of Bakersfield City Hall, 1501 Truxtun Avenue, Bakersfield, California. A scoping meeting oriented towards the agencies will be held on Wednesday, March 8, 1995, at 9:00 AM, at the Bureau of Land Management offices, 3801 Pegasus Drive, Bakersfield, California.

Interested individuals, organizations, and agencies are invited to attend either or both meetings and assist the staff in identifying the scope of environmental issues that should be analyzed in the EA.

To help focus discussions at the meetings, a scoping document outlining subject areas to be addressed in the EA will be mailed to agencies and interested individuals on the Commission mailing list. Copies of the scoping document will also be available at the scoping meetings.

Objectives

At the scoping meetings the staff will: (1) Identify preliminary environmental issues related to the proposed project; (2) identify preliminary resource issues that are not important and do not require detailed analysis; (3) identify reasonable alternatives to be addressed in the EA; (4) solicit from the meeting

participants all available information, especially quantified data, on the resources issues; and (5) encourage statements from experts and the public on issues that should be analyzed in the EA, including points of view in opposition to, or in support of, the staff's preliminary views.

Procedures

The scoping meetings will be recorded by a court reporter and all statements (oral and written) will become part of the formal record of the Commission proceedings on the Kern River No. 1 Hydroelectric Project. Individuals presenting statements at the meetings will be asked to clearly identify themselves for the record.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and assist the staff in defining and clarifying the issues to be addressed in the EA.

Persons choosing not to speak at the meetings, but who have views on the issues or information relevant to the issues, may submit written statements for inclusion in the public record at the meetings. In addition, written scoping comments may be filed with Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, until April 10, 1995.

All written correspondence should clearly show the following caption on the first page: Kern River No. 1 Hydroelectric Project, FERC Project No. 1930–014.

Intervenors—those on the Commission's service list for this proceeding (parties)—are reminded of the Commission's Rules of Practice and Procedure, requiring parties filing documents with the Commission, to serve a copy of the document on each person whose name appears on the official service list. Further, if a party or interceder files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. All entities commenting on this scoping document must file an original and eight copies of the comments with the Secretary of the Commission.

Site Visit

A site visit to the Kern River No. 1 Hydroelectric Project is planned for March 7, 1994. Those who wish to attend should plan to meet at 9:00 AM at the US Forest Service, Sequoia National Forest, Greenhorn Ranger District Offices at 15701 Highway 178 in Bakersfield, California, and shortly thereafter, leave for the project site located about 4 miles away. If you plan to attend, contact Mr. Geoff Rabone, Southern California Edison Company, by February 27, 1995, at (818) 302–8951 for directions or additional details.

Any questions regarding this notice may be directed to Mr. David Turner, Environmental Coordinator, FERC, at (202) 219–2844 or Ms. Patty Bates, FS, at (805) 871–2223.

Lois D. Cashell,

Secretary.

[FR Doc. 95–2022 Filed 1–26–95; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 1930–014, et al.]

Hydroelectric Applications [Southern California Edison Company, et al.]; Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. Type of Application: Major Relicense.

b. Project No.: 1930–014.

c. Date filed: May 2, 1994.

d. Applicant: Southern California Edison Company.

e. Name of Project: Kern River No. 1.

f. Location: On the Kern River in Kern County, California, within Sequoia National Forest.

g. Filed Pursuant to: Federal Power Act, 16 USC 791(a)–825(r).

h. Applicant Contact: Mr. C. Edward Miller, Manager of Hydro Generation, Southern California Edison Company, P.O. Box 800, 2244 Walnut Grove Avenue, Rosemead, CA 91770, (818) 302–1564.

i. FERC Contact: James Hunter at (202) 219–2839.

j. Deadline for filing Interventions and Protests: 60 days from issuance of this notice. The Commission's due date for the applicant's filing of a final amendment of this application is August 10, 1995.

k. Status of Environmental Analysis: The application is not ready for environmental analysis at this time—see attached paragraph E1.

l. Description of Project: The existing project consists of (1) a 60-foot-high, 204-foot-long concrete overflow diversion dam impounding a 27-acre reservoir at crest elevation 1,913 feet, mean sea level; (2) a gated intake structure at the left abutment with trash racks; (3) a 104-foot-long, 20-foot-wide sediment trap; (4) water conduit consisting of 42,884 feet of tunnel, 390 feet of rectangular flume, 904 feet of Lennon flume on steel structure, and 612 feet of arched-concrete conduit; (5) a 45-foot-long, 33-foot-wide, 11-foot-deep forebay; (6) a 1,693-foot-long buried penstock, with inside diameter varying from 108 inches at the intake to 71 3/8 inches at the powerhouse; (7) a 170-foot-long, 71-foot-wide, reinforced concrete powerhouse containing four generating units with a total installed capacity of 26.3 MW; (8) a rectangular tailrace that discharges flows over a weir section into the Kern River; (9) two 1.9-mile-long, 66-kV transmission lines tying into the applicant's transmission system; and (10) appurtenant facilities.

m. Purpose of Project: The Kern River No. 1 project produces an average annual output of 178.6 GWh. Power generated at the project is delivered to customers within the applicant's service area.

n. This notice also consists of the following standard paragraphs: B1 and E1.

o. Locations of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, N.E., Room 3104, Washington, D.C. 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the applicant's office (see item (h) above).

2 a. Type of Application: Conduit Exemption.

b. Project No.: 11503–000.

c. Date filed: October 26, 1994.

d. Applicant: City of Soda Springs.

e. Name of Project: Soda Creek Project No. 4.

f. Location: At the new Kackley Ditch canal, which diverts water from Soda Creek near the base of Soda dam, in Caribou County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 USC 791 (a)–825(r).

h. Applicant Contact: W. Lee Godfrey, Director of City Services, City of Soda Springs, 9 West Second South, Soda Springs, ID 83276.

i. FERC Contact: Héctor M. Pérez at (202) 219–2843.

j. Status of Environmental Analysis: This application is ready for environmental analysis at this time—see attached paragraph D–4.

k. Comment Date: March 7, 1995.

l. Description of Project: The existing project consists of: (1) An intake structure at the main canal; (2) a 42-inch-diameter, 270-feet-long welded steel penstock; (3) a powerhouse containing a single turbine-generator unit with a rated capacity of 500

kilowatts; and (4) a 100-foot-long tailrace.

m. This notice also consists of the following standard paragraphs: A2, A9, B1, and D4.

n. Available Locations of Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, N.E., Room 3104, Washington, D.C. 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the address shown in item h above.

3 a. Type of Application: Minor License (Tendered Notice).

b. Project No.: 11512–000.

c. Date filed: December 27, 1994.

d. Applicant: John H. Bigelow.

e. Name of Project: Mckenzie.

f. Location: On the Mckenzie River in Lane County, Oregon, Section 10, Township 16S, Range 6E, West Meridian.

g. Filed Pursuant to: Federal Power Act 16 USC 791(a)–825(r).

h. Applicant Contact: Amy Drought, Project Manager, Community Planning Workshop, Hendricks Hall, University of Oregon, Eugene, OR 97403, (503) 346–3653.

i. FERC Contact: Héctor M. Pérez at (202) 219–2843.

j. The project would consist of: (1) A diversion dam constructed of large rocks at river mile 73.6; (2) a concrete headgate; (3) a power canal about 1,500 feet long; (4) a 32-foot-long and 5-foot-diameter penstock; (5) a powerhouse with an installed capacity of 76 kilowatts; (6) a 30-foot-long tailrace; and (7) other appurtenances.

k. Under Section 4.32 (b)(7) of the Commission's regulations (18 CFR), if any resource agency, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission, not later than 60 days after the application is filed, and must serve a copy of the request on the applicant.

4 a. Type of Application: Major License.

b. Project No.: 11175–002.

c. Date filed: January 3, 1995.

d. Applicant: Crown Hydro Company.

e. Name of Project: Crown Mill Project.

f. Location: on the Mississippi River in Hennepin County, Minnesota.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. Applicant Contact: Mr. Greg Olsen, Crown Hydro Company, 5416 Tenth Avenue South, Minneapolis, MN 55417, (612) 822–2212.

i. FERC Contact: Robert Bell (202) 219–2806.

j. Comment Date: 60 days from the filing date in paragraph c.

k. Description of Project: The proposed project would the existing U.S. Army Corps of Engineers Upper Falls Dam and consists of:

(1) A proposed headrace canal; (2) two proposed intake tunnels; (3) a proposed powerhouse containing two generating units having a total installed capacity of 3.4–MW; (4) a proposed tailrace tunnel; (5) a proposed tailrace canal; (6) a proposed transmission line; and (7) appurtenant facilities.

l. With this notice, we are initiating consultation with the Minnesota STATE HISTORIC PRESERVATION OFFICER (SHOP), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

m. Pursuant to § 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the filing date and serve a copy of the request on the applicant.

5 a. Type of Application: Major License.

b. Project No.: 11514–000.

c. Date filed: January 3, 1995.

d. Applicant: Imperial Carving Company.

e. Name of Project: Allegan City Project.

f. Location: on the Kalamazoo River in Allegan County, Michigan.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. Applicant Contact: Mr. William E. Dalman, Imperial Carving Company, Allegan, MI 49010, (616) 673–3867.

i. FERC Contact: Robert Bell (202) 219–2806.

j. Comment Date: 60 days from the filing date in paragraph c.

k. Description of Project: The proposed project would consist of: (1) An existing 875-foot-long, 10 to 15-foot-high Dam; (2) an impoundment with surface area of 135-acres having a storage capacity of 1,290 acre-feet and a normal water surface elevation of 627.4 feet msl; (3) an existing intake structure; (4) an existing powerhouse with one generating unit with an installed capacity of 800–Kw; (5) the existing tailrace; (6) existing transmission line; and (7) appurtenant facilities.

l. With this notice, we are initiating consultation with the Michigan STATE HISTORIC PRESERVATION OFFICER (SHPO), as required by Section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

m. Pursuant to § 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the filing date and serve a copy of the request on the applicant.

6 a. Type of Application: Preliminary Permit.

b. Project No.: P–11511–000.

c. Date Filed: December 7, 1994.

d. Applicant: Hydro Matrix Partnership, Ltd.

e. Name of Project: Uniontown Project.

f. Location: On the Ohio River, Union County, Kentucky, Gallatin County, Illinois, and Posey County, Indiana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. James B. Price, Hydro Matrix Partnership, Ltd., 120 Calumet Court, Aiken, SC 19803, (803) 642–2749.

i. FERC Contact: Robert Bell (dt) (202) 219–2806.

j. Comment Date: March 23, 1995.

k. Description of Project: The proposed project would utilize the existing 3,504-foot-long, 20-foot-high Uniontown Locks and Dam, owned by the U. S. Army Corps of Engineers and consists of: (1) A proposed intake structure; (2) a proposed powerhouse containing two generating units having a total installed capacity of 45,000–Kw; (4) a proposed 2-mile-long, 161–Kv transmission line; and (5) appurtenant facilities. The estimated annual generation would be 172–Gwh.

l. Purpose of Project: All project energy produced would be sold to a local utility.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

n. Available Location of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, N.E., Room

3104, Washington, D.C., 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Uniontown Hydro Matrix Partnership, Ltd., 120 Calumet Court, Aiken, SC 29803, (803) 642–2749.

7 a. Type of Application: Major License.

b. Project No.: 10819–002.

c. Date filed: June 23, 1994.

d. Applicant: Idaho Water Resource Board.

e. Name of Project: Dworshak Small Hydro.

f. Location: On the existing water conveyance system providing water from the Corps of Engineers' Dworshak dam to Clearwater Fish Hatchery and Dworshak National Fish Hatchery, on land owned by the Corps of Engineers and the Bureau of Land Management within the boundary of the Nez Perce Indian Reservation. North Fork Clearwater River, Clearwater County, Idaho. Section 34, Township 37 North, Range 1 East, Boise Meridian.

g. Filed Pursuant to: Federal Power Act, 16 USC §§ 791(a)–825(r).

h. Applicant Contact: Mr. Ralph Mellin, Idaho Department of Water Resources, 1301 North Orchard, Boise, ID 83706–2237, (208) 327–7991.

i. FERC Contact: James Hunter, (202) 219–2839.

j. Deadline Date: Deadline for filing Interventions, Protests, or Competing Applications (see attached paragraph D8), and also for filing Written Scoping Comments [see item (l) below]—March 27, 1995.

k. Status of Environmental Analysis: The application is not ready for environmental analysis at this time—see attached paragraph D8.

l. Intent To Prepare An Environmental Assessment And Invitation For Written Scoping Comments: The Commission staff (staff) intends to prepare an Environmental Assessment (EA) on the hydroelectric project in accordance with the National Environmental Policy Act. The EA will objectively consider environmental impacts of the project and reasonable alternatives and will include economic, financial, and engineering analyses.

A draft EA will be issued and circulated for review by all interested parties. All timely filed comments on the draft EA will be analyzed by the staff and considered in the final EA. The staff's conclusions and recommendations will then be presented for the Commission's consideration in reaching its final licensing decision.

Scoping: Interested individuals, organizations, and agencies with environmental expertise are invited to assist the staff in identifying the scope of environmental issues that should be analyzed in the EA by submitting written scoping comments. To help focus those comments, a scoping document outlining subject areas to be addressed in the EA will be mailed to agencies and interested individuals on the Commission mailing list. Copies of the scoping document may also be requested from the staff.

Persons who have views on the issues or information relevant to the issues may submit written statements for inclusion in the public record. Those written comments should be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC, 20426, by the deadline date shown in item (j) above. All written correspondence should clearly show the following caption on the first page:

Dworshak Small Hydro Project, FERC No. 10819

Intervenors are reminded of the Commission's Rules of Practice and Procedure requiring parties filing documents with the Commission to serve a copy of the document on each person whose name appears on the official service list. Further, if a party or interceder files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

m. Description of Project: The proposed project would utilize releases from Dworshak dam that are conveyed by pipelines to the fish hatcheries and would consist of: (1) Connections to the existing 36-inch and 18-inch water supply lines; (2) a 58.25-foot-long, 25-foot-wide powerhouse on top of the existing water distribution structure, containing two generating units with installed capacities of 2.0 and 0.5 megawatts that would discharge flows directly into the distribution tank; (3) a substation adjacent to the powerhouse; and (4) an underground 14.4–KV, 1.6-mile-long transmission line connecting to an existing Clearwater Power Company distribution line.

n. Purpose of Project: Power generated at the project will be sold to Bonneville Power Administration.

o. This notice also consists of the following standard paragraphs: A2, A9, B1, and D8.

p. Locations of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, N.E., Room 3104, Washington, D.C. 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the applicant's office (see item (h) above).

8 a. Type of Application: Preliminary Permit.

b. Project No.: 11513–000.

c. Date filed: January 3, 1995.

d. Applicant: Walter Musa, Jr.

e. Name of Project: Canyon Creek Hydroelectric Project.

f. Location: Entirely on private lands, on Canyon Creek (a tributary of the Lewis River) in Clark County, Washington. T5N, R4E in section 5; T6N, R4E in section 32.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Albert Liou, P.E., Harza Engineering, Inc., 2353 130th Avenue NE, suite 200, P.O. Box C–96900, Bellevue, Washington 98005, (206) 882–2455.

i. FERC Contact: Mr. Michael Strzelecki, (202) 219–2827.

j. Comment Date: March 27, 1995.

k. Description of Project: The proposed run-of-river project would consist of: (1) A reinforced concrete drop-inlet structure in Canyon Creek; (2) a 60-inch-diameter, 4,000-foot-long steel penstock; (3) a powerhouse containing one 2,200–Kw generating unit; (4) a 1-mile-long transmission line interconnecting with an existing Pacific Power & Light substation at the Yale Dam switchyard; and (5) appurtenant facilities.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

9 a. Type of Application: Declaration of Intention.

b. Docket No: DI95–1–000.

c. Date Filed: December 27, 1994.

d. Applicant: Donald Greear.

e. Name of Project: Greear Micro Hydro Plant.

f. Location: On an unnamed stream, tributary to Cougar Creek and the Washougal River in Clark County, Washington (T. 2 N., R. 4 E., sec. 13.).

g. Filed Pursuant to: Federal Power Act, 16 USC Section 791(a)–825(r).

h. Applicant Contact: Mr. Donald W. Greear, 4009 Cardjal Road, Washougal, WA 98671–9547, (206) 837–3776.

i. FERC Contact: Diane M. Murray, (202) 219–2682.

j. Comment Date: March 9, 1995.

k. Description of Project: The proposed project will consist of: (1) A small reservoir; (2) a two-foot-high diversion dam; (3) a 600-foot-long, 12-inch-diameter penstock; (4) a generating

unit with an installed generating capacity of 60 kilowatts; and (5) appurtenant facilities. The excess power will be sold to the Public Utility District No. 1 of Clark County.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

10 a. Type of Application: Preliminary Permit.

b. Project No.: 11515–000.

c. Date filed: January 4, 1995.

d. Applicant: Dominguez Hydroelectric Associates.

e. Name of Project: Dominguez Hydroelectric Project.

f. Location: Partially on lands administered by the Bureau of Land Management, on the Gunnison River, in Mesa and Delta Counties, Colorado. T12S, R99W.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: James M. Pike, President, Western States Water & Power, Inc., 2384 South Kingston Street, Aurora, Colorado 80014, (303) 337–5599.

i. FERC Contact: Mr. Michael Strzelecki, (202) 219–2827.

j. Comment Date: March 27, 1995.

k. Description of Project: The proposed combination pumped-storage/run-of-river project would consist of: (1) A 250-foot-high concrete dam on the Gunnison River with a 36–MW powerhouse integral with that dam; (2) a 38,000-acre lower reservoir (Dominguez Reservoir) formed by that dam; (3) a 230-foot-high dam on a mesa above the Gunnison River forming an upper reservoir of unspecified surface area (Rim Basin Reservoir); (4) a 1,000-foot-long penstock connecting the two reservoirs; (6) an underground powerhouse along the penstock route containing eight generating units with a total installed capacity of 1,000 MW; (7) a 1-mile-long transmission line interconnecting with an existing 345-kV transmission line; and (8) appurtenant facilities. None of the facilities are existing.

The project is located near an area being studied by the U.S. Department of the Interior for inclusion as a wildlife study area.

No new roads will be needed to conduct the studies.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

Standard Paragraphs

A2. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit will be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents

must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's must also be sent to the Applicant's representatives.

D4. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice (March 7, 1995 for Project No. 11503–000). All reply comments must be filed with the Commission within 105 days from the date of this notice (April 21, 1995 for Project No. 11503–000).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' ''COMPETING APPLICATION,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

D8. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE,'' ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' or ''COMPETING APPLICATION;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

E1. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Dated: January 23, 1995.

Lois D. Cashell,

Secretary.

[FR Doc. 95–2048 Filed 1–26–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–150–000, et al.]

Texas Eastern Transmission Corporation, et al.; Natural Gas Certificate Filings

January 20, 1995.

Take notice that the following filings have been made with the Commission:

1. Texas Eastern Transmission Corporation

[Docket No. CP95–150–000]

Take notice that on January 11, 1995, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP95–150–000 a request pursuant to § § 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to operate an existing tap as a bidirectional tap to enable Texas Eastern to deliver gas to an independent producer under Texas Eastern's blanket certificate issued in Docket No. CP82–535–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Eastern proposes to operate an existing tap as a bidirectional tap to enable Texas Eastern to deliver gas to and receive gas from Zilkha Energy Company (Zilkha), an independent producer in East Cameron Block 328 Platform. It is stated that up to 3,000 Dth/d would be received and/or delivered through this tap. Zilkha will install 9,230 feet of 4-inch pipeline and related meters extending from East Cameron Block 328 to East Cameron Block 323.

It is also stated that the interruptible service for Zilkha would be under Texas Eastern's Rate Schedule IT–1. Texas Eastern's tariff does not prohibit the additional volumes, according to Texas Eastern. Also, there would be no detriment to its other customers or impact on its peak or annual deliveries.

Comment date: March 6, 1995, in accordance with Standard Paragraph G at the end of this notice.

2. Williams Natural Gas Company

[Docket No. CP95–154–000]

Take notice that on January 12, 1995, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP95–154–000 a request pursuant to Sections 157.205, 157.212 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212 and 157.216) for authorization to relocate the Kansas Gas & Electric (KG&E) Brock tap and to abandon by reclaim, sale and in place approximately 2.7 miles of 8-inch lateral pipeline located in Bourbon County, Kansas under WNG's blanket certificate issued in Docket No. CP82–479–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

The tap's relocation is prompted by highway construction from the Kansas Department of Transportation. WNG proposes to move the KG&E Brock tap from the Ft. Scott 8-inch pipeline to the existing Ft. Scott 16-inch pipeline. Due to the highway construction, WNG will abandon by reclaim approximately 550 feet, abandon in place approximately 2.6 miles, and sell to Kansas Power & Light/Kansas Gas & Electric (KPL/KGE) approximately 0.5 miles of the 8-inch pipeline. Customers will be affected by WNG's abandonment of the 8-inch pipeline, but agreement has been met to continue their receiving service from KG&E. The estimated construction cost is $16,044; the reclaim cost is $5,969 and the salvage value is $3,200. The pipeline to be abandoned in place will be purged with air and capped.

Comment date: March 6, 1995, in accordance with Standard Paragraph G at the end of this notice.

3. Washington Natural Gas Company

[Docket No. CP95–156–000]

Take notice that on January 13, 1995, Washington Natural Gas Company (Washington Natural), 815 Mercer Street, Seattle, Washington 98111, filed in Docket No. CP95–156–000 for a Blanket Certificate of Public Convenience and Necessity under Subpart F of the Commission's Regulations for the Jackson Prairie Storage Project (Storage Project), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

According to Washington Natural, the Storage Project, an aquifer-type natural gas storage facility in Chehalis (Lewis County) Washington, connects to the main pipeline facilities of Northwest Pipeline Corporation (Northwest), and is owned in equal undivided interests by Washington Natural, The Washington Water Power Company and Northwest. Washington Natural indicates that the operations of the Storage Project will be conducted in accordance with an executed agreement among the parties and that the overall supervision of the project will be under the direction of a Management Committee.

Washington Natural states that although it has applied for case specific certificates in the past related to operations at Storage Project, it would be more cost effective and less time consuming if Storage Project were permitted to utilize a blanket certificate.

Comment date: February 10, 1995, in accordance with the first paragraph of Standard Paragraph E at the end of this notice.

4. NorAm Gas Transmission Company

[Docket No. CP95–160–000]

Take notice that on January 17, 1995, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP95–160–000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon certain facilities in Oklahoma under NGT's blanket certificate issued in Docket No. CP82–384–000, *et al.*, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

NGT proposes to abandon by transfer and sale to Arkla a segment of NGT's Line 634 in Pontotoc County, Oklahoma and to abandon in place one inactive 1-inch domestic tap on NGT's Line 634–2 in Hughes County, Oklahoma. The segment of Line 634 consists of 2,520 feet of 2-inch plastic pipe and three rural taps, two 1-inch and one 2-inch taps serving only Arkla's rural domestic and small commercial customers. NGT states that no customers or service will be abandoned as a result of the transfer.

Comment date: March 6, 1995, in accordance with Standard Paragraph G at the end of this notice.

5. Williston Basin Interstate Pipeline Company and K N Interstate Gas Transmission Co.

[Docket No. CP95–161–000]

Take notice that on January 18, 1995, Williston Basin Interstate Pipeline Company (Williston), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501 and K N Interstate Gas Transmission Co. (K N), 370 Van Gordon Street, Lakewood, Colorado 80228 filed a joint application pursuant to Section 7(b) of the Natural Gas Act and part 157 of the Commission's Regulations requesting permission and approval to abandon sales,

transportation and exchange services rendered under Williston's Rate Schedule No. X–3, FERC Gas Tariff, Original Volume No. 1, and K N's Rate Schedule X–4, FERC Gas Tariff, Second Revised Volume No. 2, effective December 1, 1994.[1] The application is on file with the Commission and open to public inspection.

Williston and K N state that they propose to abandon the above services authorized in Docket Nos. CP75–154 and CP75–57, respectively, to Montana-Dakota Utilities Co. (Williston's predecessor)[2] and Kansas-Nebraska Gas Company, Inc. (K N's predecessor).[3] Williston and K N state that pursuant to a June 30, 1994, Settlement Agreement, the parties agreed to terminate the gas purchase obligation under Rate Schedules X–3 and X–4 as of July 1, 1994, provided, however, that the transportation and exchange service under Rate Schedule X–3 was to continue until December 1, 1994, when the agreement was terminated in its entirety. Williston and K N state that they are the only parties to the gas sales, transportation and exchange services in the referenced rate schedules.

Comment date: February 10, 1995, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–2049 Filed 1–26–95; 8:45 am]

BILLING CODE 6717–01–P

[1] See, 58 FPC 1738 (1977).

[2] See, 30 FERC ¶ 61,143 (1985).

[3] See, 63 FERC ¶ 61,155 (1993).

[Docket No. CP95–158–000, et al.]

Williams Natural Gas Company, et al.; Natural Gas Certificate Filings

January 23, 1995.

Take notice that the following filings have been made with the Commission:

1. Williams Natural Gas Company

[Docket No. CP95–158–000]

Take notice that on January 17, 1995, Williams Natural Gas Company (WNG), Post Office Box 3288, Tulsa, Oklahoma 74101, filed an application pursuant to Section 7(b) of the Natural Gas Act for an order permitting the abandonment by sale of WNG's Humphrey's gathering system located in Hemphill County, Texas to GPM Gas Corporation (GPM), a local producer, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

WNG states that it will convey approximately 15.1 miles of 4-inch, 6-inch, 8-inch, 12-inch and 16-inch gathering lines, associated meter runs, meters and a 660 horsepower compressor station. WNG states that there are currently two gas purchase contracts in the Humphrey's field which WNG has been unable to terminate. WNG asserts that there has been no gas flow on these contracts for some time and the meters associated with both contracts have been blinded. Additionally, WNG claims that it has made numerous telephone calls as well as written contact in its attempt to secure abandonment authorization from the producers. WNG states that it believes that one of the producers is delivering gas to another pipeline company and the other producer has plugged and abandoned the well which is connected to WNG's gathering system. Therefore, WNG asks that the Commission grant the abandonment of the gas purchase contracts and approve the abandonment of the gathering system.

WNG also states that GPM has agreed to continue to provide service to the only right-of-way customer located in the gathering system. Further, WNG states that the service will be provided pursuant to the terms and conditions of a right-of-way agreement between the customer and WNG. WNG requests that the Commission approve the abandonment by assignment of this right-of-way customer.

WNG states that GPM purchases all of the wellhead volumes in the Humphrey's gathering area, and therefore does not believe that a Section 4 filing is required to terminate the gathering service. Additionally, WNG does not believe that a default contract is needed since there are no other shippers involved.

WNG indicates that it will sell the facilities to GPM for a base price of $412,000—twenty percent of the purchase price, $82,400, is to be paid within seventy-two hours of execution of the Sales Agreement and the balance of the purchase price, $329,600, is to be paid at closing—plus an additional amount equal to three percent per annum on the unpaid balance of the purchase price, $329,600, as measured from the effective date until the closing date.

Comment date: February 13, 1995, in accordance with Standard Paragraph F at the end of this notice.

2. Pontchartrain Natural Gas System

[Docket No. CP95–159–000]

Take notice that on January 17, 1995, Pontchartrain Natural Gas System

(Pontchartrain), 1600 Smith Street, Suite 4775, Houston, Texas 77002, filed in Docket No. CP95–159–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon an exchange service with ANR Pipeline Company (ANR), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pontchartrain[1] states that it was authorized to exchange natural gas with ANR by order issued May 3, 1968, in Docket No. CP68–203. Pontchartrain further states that the exchange agreement provides for termination by either party on six months written notice. Pontchartrain asserts that by letter dated September 23, 1993, ANR provided written notice to Pontchartrain that it would terminate the service effective March 31, 1994. Pontchartrain further states that, beginning April 1, 1994, the exchange service will be superseded with a transportation service pursuant to ANR's Rate Schedule FTS–1. Pontchartrain does not propose to abandon any facilities.

Comment date: February 13, 1995, in accordance with Standard Paragraph F at the end of this notice.

3. Havre Pipeline Company, LLC

[Docket No. CP95–162–000]

Take notice that on January 18, 1995, Havre Pipeline Company, LLC (Havre), 410 17th Street, Suite 1400, Denver, Colorado 80802, filed a petition pursuant to Section 1(b)of the Natural Gas Act (NGA), 15 U.S.C. § 717(b), Section 2(16) of the Natural Gas Policy Act of 1978, 15 U.S.C. § 3301(16), and Rule 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207), for a declaratory order exempting facilities to be purchased from Northern Natural Gas Company (Northern) from Commission regulation under the NGA, and for a determination that Havre will be an intrastate pipeline within the meaning of NGPA Section 2(16), all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Specifically, Havre intends to purchase from Northern pipeline, compression, and appurtenant facilities located in Blaine, Chouteau, and Hill Counties, Montana. Havre states that a significant amount of the facilities to be acquired are low-pressure, small diameter lines used to gather Montana gas production. In addition, Havre states that the facilities to be acquired include three compressor stations and large diameter, higher pressure pipelines, whose primary function is to transport Montana gas after it is gathered. Havre states that it will be a gatherer and transporter of natural gas, and will operate the facilities to be acquired from Northern to serve intrastate shippers in Montana and those shippers that request interstate transportation services pursuant to NGPA Section 311.

Comment date: February 13, 1995, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

4. National Fuel Gas Supply Corporation

[Docket No. CP95–163–000]

Take notice that on January 19, 1995, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP95–163–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate a sales tap to render service to a new residential customer of National Fuel Gas Distribution Corporation (Distribution) under National's blanket certificate issued in Docket No. CP83–4–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

National proposes to construct and operate a new residential sales tap in Jefferson County, Pennsylvania. National states that the total estimated deliveries for the sales tap will be 150 Mcf annually.

National estimates the cost of constructing the sales tap to be $1,500, which will be reimbursed by Distribution.

Comment date: March 9, 1995, in accordance with Standard Paragraph G at the end of this notice.

5. Equitrans, Inc.

[Docket No. CP95–164–000]

Take notice that on January 19, 1995, Equitrans, Inc. (Equitrans), 3500 Park Lane, Pittsburgh, Pennsylvania 15275, filed in Docket No. CP95–164–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct a new delivery point under Equitrans's blanket certificate issued in Docket No. CP83–508–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Equitrans proposes to construct and operate a new delivery tap on Equitrans' line F–119 in the City of Waynesburg, Pennsylvania, to provide gas transportation service to Equitable Gas Company, a division of Equitable Resources, Inc. (Equitable). Equitrans states that the tap would permit Equitable to provide retail gas service to Jeffrey and Kimberly Tennant. Equitrans projects the quantity of gas to be delivered through the delivery tap would be approximately 1 Mcf on a peak day. Equitrans would transport the gas under its Rate Schedule FTS and charge Equitable the applicable rate contained in Equitrans's tariff on file with the Commission.

Comment date: March 9, 1995, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further

[1] Pontchartrain asserts that it is a ''Hinshaw'' natural gas pipeline company that operates wholly within the State of Louisiana.

notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–2050 Filed 1–26–95; 8:45 am]

BILLING CODE 6717–01–P

[Project Nos. 2404 and 2419]

Thunder Bay Power Company; Proposed Restricted Service List for a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

January 23, 1995.

Rule 2010 of the Commission's Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.[1] The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission is consulting with the Michigan State Historic Preservation Officer (hereinafter, SHPO) and the Advisory Council on Historic Preservation (hereinafter, Council) pursuant to 36 CFR 800.13 of the Council's regulations implementing Section 106 of the National Historic Preservation Act, *as amended,* (16 U.S.C. 470f), to prepare a programmatic agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places at Project Nos. 2404 and 2419.

The programmatic agreement, upon approval by the Commission, the SHPO, and the Council, would satisfy the Commission's Section 106 responsibilities for all individual undertakings carried out in accordance with the agreement until the agreement expires or is terminated (36 CFR 800.13[e]). The Commission's Section 106 requirements for the above project would be fulfilled through one programmatic agreement for comments under Section 106.

Thunder Bay Power Company, as a prospective licensee for the projects, is being asked to participate in the consultation and is being invited to sign as a concurring party to the programmatic agreement.

For purposes of commenting on the programmatic agreement we propose to restrict the service list of Project Nos. 2404 and 2419 as follows:

Mr. Roger Steed, President, Thunder Bay Power Company, 10850, Traverse Highway, #1101, Traverse City, MI 49684.

Ms. Kathryn B. Eckert, Michigan State Historic Preservation Officer, Michigan Bureau of History, Department of the State, 208 North Capitol Avenue, Lansing, MI 48918.

Advisory Council on Historic Preservation, Eastern Office of Project Review, The Old Pose Office Building, Suite 809, 1100 Pennsylvania Avenue, NW., Washington, DC 20004.

Any person on the official service list for the above-captioned proceedings may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date. An original and 8 copies of any such motion must be field with the Secretary of Commission (825 N. Capitol St., NE, Washington, D.C. 20426) and must be served on each person whose name appears on the official service list. If no such motions are filed, the restricted service list will be effective at the end of the 15 day period. Otherwise, a further notice will be issued ruling on the motion.

Lois D. Cashell,

Secretary.

[FR Doc. 95–2020 Filed 1–26–95; 8:45 am]

BILLING CODE 6717–01–M

[1] 18 CFR 385.2010 (1992).

[Docket No. CP95–118–000]

East Tennessee Natural Gas Company; Technical Conference

January 23, 1995.

A technical conference will be held to discuss issues raised in the above-captioned proceeding on Wednesday, February 22, 1995, at 9:30 a.m., in Room 2402–A at the offices of the Federal Energy Regulatory Commission, 825 N. Capitol Street, N.E., Washington, D.C. 20426.

All interested persons and Staff are permitted to attend. However, attendance does not confer party status.

For additional information, contact Timothy W. Gordon at (202) 208–2265.

Lois D. Cashell,

Secretary.

[FR Doc. 95–2019 Filed 1–26–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–4719–7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared December 26, 1994 Through December 30, 1994 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1994 (59 FR 16807).

Draft EISs

ERP No. D–AFS–G65060–TX Rating LO, Texas National Forests and Grasslands Revised Land and Resource Management Plan, Implementation, several counties, TX.

Summary: EPA expressed lack of objections with the preferred alternative in the draft EIS.

ERP No. D–COE–K35036–CA Rating EC2, Montezuma Wetlands Project, Use of Cover and Non-cover Dredged Materials to restore Wetland, Implementation, Conditional-Use-Permit, NPDES and COE Section 10 and 404 Permit, Suisum Marsh in Collinsville, Solano County, CA.

Summary: EPA supported the proposed project, but expressed environmental concern over the lack of information regarding the practicability

(including availability) of the off-site alternatives; the lack of a Clean Water Act Section 404 (b) (1) evaluation; and the inadequacy of the discussion regarding proposed monitoring and mitigation measures.

ERP No. DS–GSA–L81009–WA Rating LO, Seattle Federal Courthouse Building (Project #ZWA 81061), Implementation, Site Selection, Construction and Operation, Additional Information, King County, WA.

Summary: EPA had no objection with the proposed action as this document effectively addressed EPA's previous concerns.

Final EISs

ERP No. F–BLM–L65175–OR, Coos Bay District Resource Management Plan, Implementation, Coos Bay District, Coos, Curry and Douglas Counties, OR.

Summary: EPA had no objection to the action as proposed. The final EIS adequately addressed previous environmental concerns raised by EPA.

ERP No. F–BLM–L65177–OR, Medford District Resource Management Plan, Implementation, Medford District, Douglas, Jackson, Coos and Curry, OR.

Summary: EPA had no objection to the action as proposed. The final EIS adequately addressed previous environmental concerns raised by EPA.

ERP No. F–COE–C36070–PR, Rio Guanajibo River Basin Flood Protection Project, Implementation and NPDES Permit, Mayaguez and San German, PR.

Summary: EPA does not object to implementation of the preferred alternative for this project. However, EPA requested that additional wetlands minimization efforts be addressed prior to the issuance of the Record of Decision.

ERP No. F–FHW–C40131–NY, Long Island Expressway (I–495)/Seaford—Oyster Bay Expressway (NY–135) Interchange Project, Improvements between Exit 43 South Oyster Bay Road to Exit 46 Sunnyside Boulevard, Funding and NPDES Permit, Town of Oyster Bay, Nassau County, NY.

Summary: EPA does not anticipate that the proposed project will result in significant adverse environmental impacts. Accordingly, EPA had no objections to the implementation of the proposed project. The final EIS for the LIE/SOBE project addressed the concerns EPA identified in its review of the draft EIS.

ERP No. F–NPS–L70012–ID, City of Rocks National Reserve, Comprehensive Management Plan and Development Concept Plan, Implementation, Cassia County, ID.

Summary: EPA had no objection to the preferred alternative as described in the EIS.

ERP No. F–SCS–D36112–WV, North Fork Hughes River Watershed Plan, Installation of a Multi-purpose Roller Compacted Concrete Dam, Implementation and Funding, Flood Protection and COE Section 404 Permits, Ritchie County, WV.

Summary: EPA continued to have environmental objections with the permanent inundation of 8.1 miles of high quality aquatic habitat and 305 acres of terrestrial habitat. Because the EIS remains inadequate, EPA recommended that a Revised Draft or Supplemental Draft EIS be prepared.

ERP No. F–USN–K11055–CA, Lemoore Naval Air Station Realignment, Relocation of 98 Military Construction Projects from Miramar Naval Air Station, Implementation, Lemoore County, CA.

Summary: EPA expressed environmental concerns and recommended that the Navy amend the cumulative impact section and present the expanded analysis in the Record of Decision.

ERP No. FS–SFW–A64056–00, Programmatic EIS, Federal Aid in Sports Fish and Wildlife Restoration Programs Operation and Management, Updated Information, Implementation and Funding.

Summary: EPA had no objections to the program.

Dated: January 24, 1995.

William D. Dickerson,

Director, Federal Agency Liaison Division, Office of Federal Activities.

[FR Doc. 95–2086 Filed 1–26–95; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–4719–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075.

Weekly receipt of Environmental Impact Statements Filed January 16, 1995 Through January 20, 1995 Pursuant to 40 CFR 1506.9.

EIS No. 950016, DRAFT EIS, AFS, UT, Blanchett Park Dam and Irrigation Reservoir, Construction and Operation, Uintah Water Conservancy District (UWCD), Special-Use-Permit and COE Section 404 Permit, Ashley National Forest, Vernal Ranger District, Uintah County, UT, Due: March 13, 1995, Contact: Roland Leiby (801) 781–5140.

EIS No. 950017, DRAFT EIS, NPS, TN, Foothills Parkway Section 8D, Construction, between Wear Valley Road (US 321) and Gatlinburg Pigeon Forge Spur (US 441/321), Right-of-Way and COE Section 404 Permits, Great Smoky Mountain National Park, Blount, Sevier and Cocke Counties, TN, Due: March 17, 1995, Contact: Tom Brown (404) 331–2608.

EIS No. 950018, DRAFT EIS, BLM, WY, Kenetech/PacifiCorp Windpower Development Project, Construction of 500–MW Windplant and 230-kV Transmission Line between Arlington and Hanna Right-Use-Way Grant, COE Section 404 Permit and Special-Use-Permit, Carbon County, WY, Due: March 27, 1995, Contact: Walter E. George (307) 324–7171.

EIS No. 950019, FINAL EIS, FHW, NC, US 421 Transportation Improvement just west of the South Fork New River to NC–1361 east of the Town of Deep Gap, Funding, Land Transfer and COE Section 404 Permit(s), Watauga County, NC, Due: February 27, 1995, Contact: Nicholas L. Graf (919) 856–4346.

EIS No. 950020, DRAFT SUPPLEMENT, FHW, WV, OH, Appalachian Corridor D Construction, Ohio River to I–77, Updated Information concerning the completion of Corridor D ''Missing Link'', from US 50 in Belpre, OH to the Interchange east of Parkersburg, WV, US Coast Guard Bridge, COE Section 404 and NPDES Permits, WV and OH, Due: March 31, 1995, Contact: Bobby Blackmon (304) 558–3093.

EIS No. 950021, DRAFT EIS, FHW, CA, Alameda Railroad Corridor Consolidated Project, Construction from Downtown Los Angeles to the Badger Avenue Bridge/CA–91, Funding, COE Section 404 Permit and ICC Approval, Los Angeles County, CA, Due: March 13, 1995, Contact: William Gelston (202) 366–0354.

EIS No. 950022, DRAFT EIS, FRC, VA, Gaston and Roanoke Rapids Project (FERC-No. 2009–003), Nonpoint Use of Project Lands and Water for the City of Virginia Beach Water Supply Project, License Issuance, Brunswick County, VA, Due: March 13, 1995, Contact: Steve Edmondson (202) 219–2653.

EIS No. 950023, DRAFT EIS, BLM, WY, Greater Wamsutter Area II Natural Gas Development Project, Approvals and Permits Issuance, Carbon and Sweetwater Counties, WY, Due: March 27, 1995, Contact: John Spehar (307) 324–7171.

EIS No. 950024, DRAFT EIS, DOE, SC, Savannah River Site Waste Management Facilities,

Implementation, Aiken, Allendale and Barnwell Counties, SC, Due: March 13, 1995, Contact: Yardena Mansoor (202) 586–9326.

Amended Notices

EIS No. 950013, FINAL EIS, DOE, CA, Adoption Southeast Regional Wastewater Treatment Plant and Geysers Effluent Pipeline Injection Project, Improvements Funding, COE Section 404 Permit and NPDES Permit, City of Clearlake, Lake County, CA, Contact: Teresa Perkins (208) 526–1483.

Published FR 01–20–95 Correction of the Agency Contact Person Name and Telephone Number.

Dated: January 24, 1995.

William D. Dickerson,

Director, Federal Agency Liaison Division Office of Federal Activities.

[FR Doc. 95–2087 Filed 1–26–95; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–4719–5]

Joint Water Pollution Control Plant, Upgrade to Full Secondary Treatment; Intent To Prepare a Draft Environmental Impact Statement

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of intent to prepare a draft environmental impact statement (DEIS) for the upgrade to full secondary treatment for the Joint Water Pollution Control Plant located in Carson, California.

PURPOSE: To fulfill the requirements of Section 102(2)(c) of the National Environmental Policy Act, EPA has identified the need to prepare a DEIS and therefore issues this Notice of Intent pursuant to 40 CFR 1501.7.

FOR FURTHER INFORMATION AND TO BE PLACED ON THE PROJECT MAILING LIST CONTACT: Ms. Elizabeth Borowiec, Water Management Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA, 94105, Telephone: (415) 744–1948

Summary: Description of proposed action.

Need for Action

In January, 1992, EPA and California Regional Water Quality Control Board filed suit against the Districts under Section 309 of the Clean Water Act to comply with full secondary treatment at the JWPCP. A Consent Decree was negotiated between the Districts, the United States, the Natural Resources Defence Council, and Heal the Bay to meet this requirement by December 31, 2002. The Districts have prepared the Joint Outfall System 2010 Master Facilities Plan which addresses the need to provide full secondary treatment, as well as the long-term need for wastewater treatment, reuse, and disposal through the year 2010. In addition, the Districts have completed a draft program environmental impact report (EIR) that analyzes the impacts of the 2010 Plan as required by the California Environmental Quality Act (CEQA). The draft EIR was circulated for public review on November 14, 1994. The comment period for the draft EIR concluded on January 17, 1995. Finally, unlike most EIRs, the Districts have initiated a consultation and review process with federal agencies on this draft EIR, which is similar to the process required under the National Environmental Policy Act (NEPA). This process was launched pursuant to requirements of the State Water Resources Control Board's State Revolving Fund (SRF) loan program.

EPA intends to award direct grant funds to the County Sanitation Districts of Los Angeles County (Districts) provided under the 1995 Appropriations Act (Public Law 103–327). The purpose of the grant is for the planning, design, and construction of wastewater treatment facilities to upgrade the Joint Water Pollution Control Plant (JWPCP) in the City of Carson, California to 400 million gallons per day (mgd) of secondary treatment capacity.

Alternatives

Alternatives to the proposed action anticipated to be analyzed in the DEIS consist of:

- those alternatives analyzed in the draft program EIR, which include upgrading the JWPCP to either 400 mgd or 350 mgd of secondary treatment capacity; and
- the No-Action Alternative, where no new facilities would be funded by EPA to upgrade the level of treatment at the JWPCP.

Scoping

The focus of the DEIS will be on the construction and operation of the secondary treatment and related solids processing facilities at the JWPCP. EPA Region IX invites comments on the proposed action and alternatives to the proposed action. A separate EIS scoping meeting is not planned at this time because of the extensive scoping process already undertaken by the Districts during preparation of the draft EIR. However, public comments will be accepted after the release of the DEIS. For additional information, contact the person indicated above.

Estimated Date of DEIS Release

Spring of 1995.

Responsible Official: John Wise, Deputy Regional Administrator.

Dated: January 24, 1995.

Richard E. Sanderson,

Director, Office of Federal Activites.

[FR Doc. 95–2113 Filed 1–26–95; 8:45 am]

BILLING CODE 6560–50–P

[ER–FRL–4719–4]

Designation of Ocean Dredged Material Disposal Site (ODMDS) Offshore Port Everglades, FL; Intent To Prepare an Environmental Impact Statement

AGENCY: U.S. Environmental Protection Agency (EPA) Region IV.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) on the final designation of an ODMDS offshore Port Everglades, Florida.

PURPOSE: The U.S. EPA, Region IV, in accordance with Section 102(2)(c) of the National Environmental Policy Act (NEPA) and in cooperation with the U.S. Army Corps of Engineers, Jacksonville District, will prepare a Draft EIS on the designation of an ODMDS offshore Port Everglades, Florida. An EIS is needed to provide the information necessary to designate an ODMDS. This Notice of Intent is issued Pursuant to Section 102 of the Marine Protection, Research and Sanctuaries Act of 1972, and 40 CFR Part 228 (Criteria for the Management of Disposal Sites for Ocean Dumping).

FOR FURTHER INFORMATION AND TO BE PLACED ON THE PROJECT MAILING LIST CONTACT: Mr. Christopher McArthur, U.S. Environmental Protection Agency, Region IV, 345 Courtland St. NE, Atlanta, Georgia 30365, phone 404–347–1740 ext. 4289 or Mr. Rea Boothby, U.S. Army Corps of Engineers, Jacksonville District, Planning Division, P.O. Box 4970, Jacksonville, Florida 32232–0019, phone 904–232–3453.

SUMMARY: The entrance channel and turning basin of Port Everglades must receive periodic maintenance dredging to ensure safe navigation. The dredged material has been disposed of at the existing interim ODMDS for Port Everglades in the past. Designation of a Port Everglades ODMDS is being evaluated to determine the most feasible and environmentally acceptable ocean disposal site for anticipated future dredging.

NEED FOR ACTION: The Corps of Engineers, Jacksonville District, has

requested that EPA designate an ODMDS offshore Port Everglades, Florida for the disposal of dredged material from the Port Everglades area when ocean disposal is the preferred disposal alternative. An EIS is required to provide the necessary information to evaluate alternatives and designate the preferred ODMDS.

Alternatives

1. No action. The no action alternative is defined as not designating an ocean disposal site.
2. Alternative disposal sites in the nearshore, and shelf break regions.

Scoping

A scoping meeting is not contemplated. Scoping will be accomplished through contact with affected Federal, State and local agencies, and with anticipated interested parties.

Estimated Date of Release

The Draft EIS will be made available in January 1997.

Responsible Official

John H. Hankinson, Jr., Regional Administer, Region IV.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 95–2088 Filed 1–26–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5144–5]

State Program Requirements; Application to Administer the National Pollutant Discharge Elimination System (NPDES) Program; Florida

AGENCY: Environmental Protection Agency.

ACTION: Public notice of application for NPDES program approval.

SUMMARY: The State of Florida has submitted a request to the Environmental Protection Agency (EPA) for approval to administer the National Pollutant Discharge Elimination System (NPDES) program for regulating discharges of pollutants into waters of the State of Florida. The NPDES program would be administered by the Florida Department of Environmental Protection (FDEP). FDEP has requested a phased NPDES program encompassing permitting for: (1) Domestic discharges; (2) industrial discharges, including those which also have storm water discharges; and (3) pretreatment. Storm water discharges from municipal separate storm sewer systems (MS4's), individual storm water-only discharges, storm water general permits, and federal facility dischargers are to be phased in by the year 2000 for administration by the State. This notice provides for public hearing and a comment period on Florida's request. Under EPA regulations, Regional Administrators will approve or disapprove this request after taking into consideration all comments received.

DATES: Comments must be received on or before March 13, 1995. Public hearings have been scheduled for:

March 7, 1995, 10 a.m.–1 p.m. and 7 p.m.–10 p.m., Civic Convention Center, 9800 International Drive, Orlando, Florida 32819, Orange County

March 9, 1995, 10 a.m.–1 p.m. and 7 p.m.–10 p.m., Leon County Civic Center, 505 W. Pensacola Street, Tallahassee, Florida 32301, Leon County

Part or all of the submittal (which comprises approximately 1500 pages) may be copied at any FDEP office, or EPA office in Atlanta, at a minimal cost per page. A copy of the entire submittal may be obtained from the FDEP office in Tallahassee for a fee.

FOR FURTHER INFORMATION CONTACT: Ms. Dee Stewart, Environmental Engineer, Permits Section, U.S. EPA Region IV, 345 Courtland Street, NE., Atlanta, Georgia, 30365, 404/347–3012, ext. 2928, or Mr. Daryll Joyner, FDEP, Suite 202, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida, 32301, 904/488–4520.

SUPPLEMENTARY INFORMATION: Section 402 of the Federal Clean Water Act (Act) created the NPDES program under which the Administrator of the United States Environmental Protection Agency (EPA) may issue permits for the discharge of pollutants into waters of the United States under conditions required by the Act. The Act also provides that a State may be authorized to administer the NPDES program upon request and showing that the State has authority and a program sufficient to meet requirements of the Act. The Governor of Florida has requested NPDES program approval and on November 21, 1994, submitted a complete program description (including funding, personnel requirements and organization, and enforcement procedures), an Independent Counsel's statement, copies of applicable State statutes and regulations, and a Memorandum of Agreement (MOA) to be executed by the EPA, Region IV, Regional Administrator, and the Secretary, FDEP. The EPA Regional Administrator is required to approve the submitted program within 90 days of submittal unless it does not meet the requirements of section 402(b) of the Act and EPA regulations, which include, among other things, authority to issue permits which comply with the Act, authority to impose civil and criminal penalties for permit violations, and authority to ensure that the public is given notice and opportunity for a hearing on each proposed NPDES permit issuance. At the close of the comment period (including the public hearing), the EPA Regional Administrator will decide to approve or disapprove Florida's NPDES program. In accordance with EPA regulations, EPA and FDEP have agreed to extend the review period beyond the ninety (90) day statutory period until April 30, 1995.

The decision to approve or disapprove Florida's NPDES program will be based on the requirements of section 402 of the CWA and 40 CFR Part 123. If the Florida NPDES program is approved, the EPA Regional Administrator will so notify the State. Notice will be published in the **Federal Register** and, as of the date of program approval, EPA will suspend issuance of NPDES permits in Florida, except for: federal facilities, municipal separate storm sewer systems, storm water general permits, and individual storm water permits, until FDEP assumes permitting and enforcement authorities for these categories in the year 2000. The State's program will implement federal law and operate in lieu of the EPA administered program. However, EPA will retain the right to object to NPDES permits proposed to be issued by the FDEP. If the EPA Regional Administrator disapproves Florida's NPDES program, the Regional Administrator will notify the FDEP of the reasons for disapproval and of any revisions or modification to the program which are necessary to obtain approval.

The Florida submittal may be reviewed during normal business hours, Monday through Friday, excluding holidays, by the public at the Florida FDEP and EPA offices at the address appearing earlier in this Notice and at the following FDEP District offices: Northwest District Office, 160 Governmental Center, Pensacola, Florida, 32501–5794; Southwest District, 3804 Coconut Palm Drive, Tampa, Florida, 33619–8218; Northeast District, 7825 Baymeadows Way, Suite 200B, Jacksonville, Florida, 32256–7577; Central District, 3319 Maguire Blvd., Suite 232, Orlando, Florida, 32803–3767; South District, 2295 Victoria Ave., Suite 364, Fort Myers, Florida, 33901, and the Southeast District, 1900 S. Congress Ave., Suite A, West Palm Beach, Florida, 33406.

Public hearings to consider Florida's request to administer the NPDES permit program have been scheduled as shown at the beginning of this Notice. The Hearing Panel will include representatives of EPA Region IV and the Florida FDEP.

The following are policies and procedures which shall be observed at the public hearings:

1. The Presiding Officer shall conduct the hearing in a manner which will allow all interested persons wishing to make oral statements an opportunity to do so; however, the Presiding Officer may inform attendees of any time limits during the opening statement of the hearings.

2. Any person may submit written statements or documents for the record.

3. The Presiding Officer may, in his discretion, exclude oral testimony if such testimony is overly repetitious of previous testimony or is not relevant to the decision to approve or require revision of the submitted State program.

4. The transcript taken at the hearing, together with copies of all submitted statements and documents, shall become a part of the record submitted to the Regional Administrator.

5. The hearing record shall be left open until the deadline for receipt of comments specified at the beginning of this Notice to allow any person time to submit additional written statement or to present views or evidence tending to rebut testimony presented at the public hearing.

Hearing statements may be oral or written. Written copies of oral statements are urged for accuracy of the record and for use of the Hearing Panel and other interested persons. Statements should summarize any extensive written materials. All comments received by EPA Region IV by the deadline for receipt of comments, or presented at the public hearing, will be considered by EPA before taking final action on the Florida request for NPDES program approval.

Regulatory Flexibility Act

After review of the facts presented in this document, I hereby certify, pursuant to the provisions of 5 U.S.C. 605(b), that this notice of Florida's application to administer the NPDES program will not have a significant impact on a substantial number of small entities. The approval of the Florida NPDES permit program would merely transfer responsibilities for administration of the NPDES permit program from Federal to State government.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95–1862 Filed 1–26–95; 8:45 am]

BILLING CODE 6560–5O–P

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 232–011321–003.

Title: Maersk/Sea-Land Pacific Agreement.

Parties:

A.P. Moller-Maersk Line

Sea-Land Service, Inc.

Synopsis: The proposed amendment revises Article 9.3—Duration and Termination by reducing the notice period required for withdrawal from the Agreement.

Agreement No.: 203–011487.

Title: The ''8900'' Lines/APL Discussion Agreement.

Parties:

''8900'' Lines Agreement

American President Lines, Ltd.

Synopsis: The proposed Agreement permits the parties to meet, discuss their separate tariffs, rates, service items, rules and service contracts in the trade from all United States ports and points to all ports and points in Bahrain, Iran, Iraq, Kuwait, Oman, Qatar, Saudi Arabia, the United Arab Emirates, Jordan and Yemen. Adherence to any such agreement reached is voluntary.

Agreement No.: 224–200555–003.

Title: Jacksonville Port Authority/ Allen Freight Trailer Bridge, Inc. Terminal Agreement.

Parties:

Jacksonville Port Authority

Allen Freight Trailer Bridge, Inc.

Synopsis: The proposed amendment provides for the annual rate increase to the Agreement.

By Order of the Federal Maritime Commission.

Dated: January 24, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95–2043 Filed 1–26–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MEDIATION AND CONCILIATION SERVICE

Labor-Management Cooperation Program; Application Solicitation

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Publication of final Fiscal Year 1995 Program Guidelines/Application Solicitation for Labor-Management Committees.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS) is publishing the final Fiscal Year 1995 Program Guidelines/Application Solicitation for the Labor-Management Cooperation program to inform the public. The program is supported by Federal funds authorized by the Labor-Management Cooperation Act of 1978, subject to annual appropriations. No comments were received from the public.

FOR FURTHER INFORMATION CONTACT: Peter L. Regner, 202–606–8181.

Labor-Management Cooperation Program Application Solicitation for Labor-Management Committees FY 1995

A. Introduction

The following is the final solicitation for the Fiscal Year (FY) 1995 cycle of the Labor-Management Cooperation Program as it pertains to the support of labor-management committees. These guidelines represent the continuing efforts of the Federal Mediation and Conciliation Service to implement the provisions of the Labor-Management Cooperation Act of 1978 which was initially implemented in FY81. The Act generally authorizes FMCS to provide assistance in the establishment and operation of plant, area, public sector, and industry-wide labor-management committees which:

(A) have been organized jointly by employers and labor organizations representing employees in that plant, area, government agency, or industry; and

(B) are established for the purpose of improving labor-management

relationships, job security, and organizational effectiveness; enhancing economic development; or involving workers in decisions affecting their jobs, including improving communication with respect to subjects of mutual interest and concern.

The Program Description and other sections that follow, as well as a separately published FMCS Financial and Administrative Grants Manual, make up the basic guidelines, criteria, and program elements a potential applicant for assistance under this program must know in order to develop an application for funding consideration for either a plant, area-wide, industry, or public sector labor-management committee. Directions for obtaining an application kit may be found in Section H. A copy of the Labor-Management Cooperation Act of 1978, included in the application kit, should be reviewed in conjunction with this solicitation.

B. Program Description

Objectives

The Labor-Management Cooperation Act of 1978 identifies the following seven general areas for which financial assistance would be appropriate:

(1) to improve communication between representatives of labor and management;

(2) to provide workers and employers with opportunities to study and explore new and innovative joint approaches to achieving organizational effectiveness;

(3) to assist workers and employers in solving problems of mutual concern not susceptible to resolution within the collective bargaining process;

(4) to study and explore ways of eliminating potential problems which reduce the competitiveness and inhibit the economic development of the plant, area, or industry;

(5) to enhance the involvement of workers in making decisions that affect their working lives;

(6) to expand and improve working relationships between workers and managers; and

(7) to encourage free collective bargaining by establishing continuing mechanisms for communication between employers and their employees through Federal assistance in the formation and operation of labor management committees.

The primary objective of this program is to encourage and support the establishment and operation of joint labor-management committees to carry out specific objectives that meet the forementioned general criteria. The term ''labor'' refers to employees represented by a labor organization and covered by a formal collective bargaining agreement. These committees may be found at either the plant (worksite), area, industry, or public sector levels. A plant or worksite committee is generally characterized as restricted to one or more organizational or productive units operated by a single employer. An area committee is generally composed of multiple employers of diverse industries as well as multiple labor unions operating within and focusing upon city, county, contiguous multicounty, or statewide jurisdictions. An industry committee generally consists of a collection of agencies or enterprises and related labor unions producing a common product or service in the private sector on a local, state, regional, or nationwide level. A public sector committee consists either of government employees and managers in one or more units of a local or state government, managers and employees of public institutions of higher education, or of employees and managers of public institutions of higher education, or of employees and managers of public elementary and secondary schools. Those employees must be covered by a formal collective bargaining agreement or other enforceable labor-management agreement. In deciding whether an application is for an area or industry committee, consideration should be given to the above definitions as well as to the focus of the committee.

In FY 1995, competition will be open to plant, area, private industry, and public sector committees. Public Sector committees will be divided into two sub-categories for scoring purposes. One sub-category will consist of committees representing state/local units of government and public institutions of higher education. The second sub-category will consist of public elementary and secondary schools.

Special consideration will be given to committee applications involving innovative or unique efforts. All application budget requests should focus directly on supporting the committee. Applicants should avoid seeking funds for activities that are clearly available under other Federal programs (e.g., job training, mediation of contract disputes, etc.).

Required Program Elements

1. *Problem Statement*—The application, which should have numbered pages, must discuss in detail what specific problem(s) face the plant, area, government, or industry, and its workforce that will be addressed by the committee. Applicants must document the problem(s) using as much relevant data as possible and discuss the full range of impacts these problem(s) could have or are having on the plant, government, area, or industry. An industrial or economic profile of the area and workforce might prove useful in explaining the problem(s). This section basically discusses *WHY* the effort is needed.

2. *Results or Benefits Expected*—By using specific goals and objectives, the application must discuss in detail *WHAT* the labor-management committee as a demonstration effort will accomplish during the life of the grant. While a goal of ''improving communication between employers and employees'' may suffice as one over-all goal of a project, the objectives must, whenever possible, be expressed in specific and measurable terms. Applicants should focus on the impacts or changes that the committee's efforts will have. Existing committees should focus on *expansion* efforts/results expected from FMCS funding. The goals, objectives, and projected impacts will become the foundation for future monitoring and evaluation efforts.

3. *Approach*—This section of the application specifies HOW the goals and objectives will be accomplished. At a minimum, the following elements must be included in all grant applications:

(a) a discussion of the strategy the committee will employ to accomplish its goals and objectives;

(b) a listing, by name and title, of all existing or proposed members of the labor-management committee. The application should also offer a rationale for the selection of the committee members (e.g., members represent 70% of the area of plant workforce).

(c) a discussion of the number, type, and role of all committee staff persons. Include proposed position descriptions for all staff that will have to be hired as well as resumes for staff already on board;

(d) in addressing the proposed approach, applicants must also present their justification as to why Federal funds are needed to implement the proposed approach;

(e) a statement of how often the committee will meet as well as any plans to form subordinate committees for particular purposes; and

(f) for applications from existing committees (i.e., in existence at least 12 months prior to the submission deadline), a discussion of past efforts and accomplishments and how they would integrate with the proposed expanded effort.

4. *Major Milestones*—This section must include an implementation plan that indicates what major steps, operating activities, and objectives will

be accomplished as well as a timetable for *WHEN* they will be finished. A milestone chart must be included that indicates what specific accomplishments (process and impact) will be completed by month over the life of the grant using October 1, 1995, as the start date. The accomplishment of these tasks and objectives, as well as problems and delays therein, will serve as the basis for quarterly progress reports to FMCS.

5. *Evaluation*—Applicants must provide for either an external evaluation or an internal assessment of the project's success in meeting its goals and objectives. An evaluation plan must be developed which briefly discusses what basic questions or issues the assessment will examine and what baseline data the committee staff already has or will gather for the assessment. This section should be written with the application's own goals and objectives clearly in mind and the impacts or changes that the effort is expected to cause.

6. *Letters of Commitment*—Applications must include current letters of commitment from *all* proposed or existing committee participants and chairpersons. These letters should indicate that the participants support the application and will attend scheduled committee meetings. A blanket letter signed by a committee chairperson or other official on behalf of all members is not acceptable. We encourage the use of individual letters submitted on company or union letterhead represented by the individual. The letters should match the names provided under Section 3(b).

7. *Other Requirements*—Applicants are also responsible for the following:

(a) the submission of data indicating approximately how many employees will be covered or represented through the labor-management committee;

(b) from existing committees, a copy of the exiting staffing levels, a copy of the by-laws, a breakout of annual operating costs and identification of all sources and levels of current financial support;

(c) a detailed budget narrative based on policies and procedures contained in the FMCS Financial and Administrative Grants Manual;

(d) an assurance that the labor-management committee will not interfere with any collective bargaining agreements; and

(e) an assurance that committee meetings will be held at least every other month and that written minutes of all committee meetings will be prepared and made available to FMCS.

Selection Criteria

The following criteria will be used in the scoring and selection of applications for award:

(1) The extent to which the application has clearly identified the problems and justified the needs that the proposed project will address.

(2) The degree to which appropriate and measurable goals and objectives have been developed to address the problems/needs of the area. For existing committees, the extent to which the committee will focus on expanded efforts.

(3) The feasibility of the approach proposed to attain the goals and objectives of the project and the perceived likelihood of accomplishing the intended project results. This section will also address the degree of innovativeness or uniqueness of the proposed effort.

(4) The appropriateness of committee membership and the degree of commitment of these individuals to the goals of the application as indicated in the letters of support.

(5) The feasibility and thoroughness of the implementation plan in specifying major milestones and target dates.

(6) The cost effectiveness and fiscal soundness of the application's budget request, as well as the application's feasibility vis-a-vis its goals and approach.

(7) The overall feasibility of the proposed project in light of all of the information presented for consideration; and

(8) The value to the government of the application in light of the overall objectives of the Labor-Management Cooperation Act of 1978. This includes such factors as innovativeness, site location, cost, and other qualities that impact upon an applicant's value in encouraging the labor-management committee concept.

C. Eligibility

Eligible grantees include state and local units of government, labor-management committees (or a labor union, management association, or company on behalf of a committee that will be created through the grant), and certain third party private non-profit entities on behalf of one or more committees to be created through the grant. Federal government agencies and their employees are not eligible.

Third-party private, non-profit entities which can document that a major purpose or function of their organization has been the improvement of labor relations are eligible to apply. However, all funding must be directed to the functioning of the labor-management committee, and all requirements under Part B must be followed. Applications from third-party entities must document particularly strong support and participation from all labor and management parties with whom the applicant will be working. Applicants from third-parties which do not directly support the operation of a new or expanded committee will not be deemed eligible, nor will applications signed by entities such as law firms or other third parties failing to meet the above criteria.

Applicants who received funding under this program in the past for committee operations are generally not eligible to apply. The only exceptions apply to third-party grantees who seek funds on behalf of an entirely different committee.

D. Allocations

FMCS has been given an allocation of approximately $1.25 million for this program. Specific funding levels will not be established for each type of committee. Instead, the review process will be conducted in such a manner that at least two awards will be made in each category (plant, industry, public sector, and area), providing that FMCS determines that at least two outstanding applications exist in each category. After these applications are selected for award, the remaining applications will be considered according to merit without regard to category.

In addition to the competitive process identified in the preceding paragraph, FMCS will set aside a sum not to exceed thirty percent of its appropriation to be awarded on a non-competitive basis. These funds will be used to support industry-specific national-scope initiatives and/or regional industry models with high potential for widespread replication. They will also be used to support the Eighth National Labor-Management Conference in Chicago, Illinois, on May 29–31, 1996.

FMCS reserves the right to retain up to an additional five percent of the FY95 appropriation to contract for program support purposes (such as evaluation) other than administration.

E. Dollar Range and Length of Grants and Continuation Policy

Awards to continue and expand existing labor-management committees (i.e., in existence 12 months prior to the submission deadline) will be for a period of 12 months. If successful progress is made during this initial budget period and if sufficient appropriations for expansion and

continuation projects are available, these grants may be continued for a limited time at a 40 percent cash match ratio. Initial awards to establish new labor-management committees (i.e., not yet established or in existence less than 12 months prior to the submission deadline), will be for a period of 18 months. If successful progress is made during this initial budget period and if sufficient appropriations for expansion and continuation projects are available, these grants may be continued for a limited time at a 40 percent cash match ratio. The dollar range of awards is as follows:

—Up to $35,000 in FMCS funds per annum for existing in-plant applicants;
—Up to $50,000 over 18 months for new in-plant committee applicants;
—Up to $75,000 in FMCS funds per annum for existing area, industry and public sector committee applicants;
—Up to $100,000 per 18-month period for new area, industry, and public sector committee applicants.

Applicants are reminded that these figures represent maximum Federal funds only. If total costs to accomplish the objectives of the application exceed the maximum allowable Federal funding level and its required grantee match, applicants may supplement these funds through voluntary contributions from other sources.

F. Match Requirements and Cost Allowability

Applicants for new labor-management committees must provide at least 10 percent of the total allowable project costs. Applicants for existing committees must provide at least 25 percent of the total allowable project costs. All matching funds may come from state or local government sources or private sector contributions, but may generally not include Federal funds. Funds generated by grant-supported efforts are considered ''project income,'' and may not be used for matching purposes.

It will be the policy of this program to reject all requests for indirect or overhead costs as well as ''in-kind'' match contributions. In addition, grant funds must not be used to supplant private or local/state government funds currently spent for these purposes. Funding requests from existing committees should focus entirely on the costs associated with the expansion efforts. Also, under no circumstances may business or labor officials participating on a labor-management committee be compensated out of grant funds for *time* spent at committee meetings or *time* spent in training sessions. Applicants generally will not be allowed to claim all or a portion of *existing* staff time as an expense or match contribution.

For a more complete discussion of cost allowability, applicants are encouraged to consult the FY95 FMCS Financial and Administrative Grants Manual which will be included in the application kit.

G. Application Submission and Review Process

Applications should be signed by *both* a labor and management representative and be postmarked no later than May 13, 1995. No applications or supplementary materials can be accepted after the deadline. It is the responsibility of the applicant to ensure that the application is correctly postmarked by the U.S. Postal Service or other carrier. An original application containing numbered pages, plus *three* copies, should be addressed to the Federal Mediation and Conciliation Service, Labor-Management Program Services, 2100 K Street, NW, Washington, D.C. 20427. FMCS will not consider videotaped submissions or video attachments to submissions.

After the deadline has passed, all eligible applications will be reviewed and scored initially by one or more Peer Review Boards. The Boards(s) will decide which applications will be recommended for funding consideration. The Manager, Labor-Management Program Services, will finalize the scoring and selection process for those applications recommended by the Board(s). The individual listed as contact person in item 6 on the application form will generally be the only person with whom FMCS will communicate during the application review process.

All FY95 grant applicants will be notified of results and all grant awards will be made before September 30, 1995. Applications submitted after the May 13 deadline date or that fail to adhere to eligibility or other major requirements will be administratively rejected by the Manager, Labor-Management Program Services.

H. Contact

Individuals wishing to apply for funding under this program should contact the Federal Mediation and Conciliation Service as soon as possible to obtain an application kit. These kits and additional information or clarification can be obtained free of charge by contacting Linda Stubbs, Lee A. Buddendeck, or Peter L. Regner, Federal Mediation and Conciliation Service, Labor-Management Program Services, 2100 K Street, NW., Washington, DC 20427; or by calling 202–606–8181.

John Calhoun Wells,

Director, Federal Mediation and Conciliation Service.

[FR Doc. 95–1890 Filed 1–26–95; 8:45 am]

BILLING CODE 6732–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Request for comment; extension of comment period.

SUMMARY: On January 5, 1995, the Board requested comment on proposed revisions to the Annual Report of Foreign Banking Organizations (FR Y-7) and the Foreign Banking Organization Confidential Report of Operations (FR 2068). The Secretary of the Board, acting under delegated authority, has extended the comment period by 30 days to give the public additional time to provide comments.

DATES: Comments must be received by March 9, 1995.

ADDRESSES: Comments may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C., 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room M-P-500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

Comments may also be submitted to the OMB desk officer for the Board: Milo Sunderhauf, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (OMB 83-I), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, Mary M. McLaughlin, Federal Reserve Board Clearance Officer (202-452-3829), Division of Research and Statistics,

Board of Governors of the Federal Reserve System, Washington, D.C. 20551. For the hearing impaired *only*, Telecommunications Device for the Deaf (TTD) Dorothea Thompson (202-452-3544), Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: The Board has received a request to extend the comment period on the proposed revisions to the Annual Report of Foreign Banking Organizations (FR Y-7) and Foreign Banking Organization Confidential Report of Operations (FR 2068) (60 FR 1779, January 5, 1995). In view of the significance of the procedural changes that are proposed in the reports, the Board is extending the comment period to March 9, 1995.

By order of the Secretary of the Board, acting pursuant to delegated authority for the Board of Governors of the Federal Reserve System, January 23, 1995.

William W. Wiles,

Secretary of the Board.

[FR. Doc. 95–2052 Filed 1–26–95; 8:45am]

BILLING CODE 6210–01–F

Agency Forms Under Review

Background

Notice is hereby given of the final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Mary M. McLaughlin—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3829).

OMB Desk Officer—Milo Sunderhauf—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202-395-7340).

Final approval under OMB delegated authority of the extension, with revisions, of the following reports:

1. Report title: Report of Foreign (Non-U.S.) Currency Deposits.
Agency form number: FR 2915.
OMB Docket number: 7100-0237.
Frequency: Quarterly.
Reporters: Depository institutions.
Annual reporting hours: 418.
Estimated average hours per response: 0.50.
Number of respondents: 209.
Small businesses are affected.

General description of report: This information collection is required [12 U.S.C. 248(a)] and is given confidential treatment [5 U.S.C. 552(b)(4)].

Abstract: The FR 2915 reporting form collects weekly averages of the amounts outstanding for foreign (non-U.S.) currency deposits held at U.S. offices of depository institutions, converted to U.S. dollars and included in the FR 2900 (OMB No. 7100-0087), the principal deposits report that is used for the calculation of required reserves and for construction of the monetary and reserves aggregates. Foreign currency deposits are subject to reserve requirements and, therefore, are included in the FR 2900. However, foreign currency deposits are not included in the monetary aggregates. The FR 2915 data are used to back foreign currency deposits out of the FR 2900 data for construction of the monetary aggregates. The FR 2915 data also are used to monitor the volume of foreign-currency deposits.

The revision reduces the reporting frequency for current monthly reporters to quarterly, which reduces the annual reporting burden for this report by 66 percent.

2. Report title: Financial Statements for a Bank Holding Company Subsidiary Engaged in Bank-Ineligible Securities Underwriting and Dealing.
Agency form number: FR Y-20.
OMB Docket number: 7100-0248.
Frequency: Quarterly.
Reporters: Bank Holding Companies.
Annual reporting hours: 1,519.
Estimated average hours per response: 12.25.
Number of respondents: 31.
Small businesses are not affected.

General description of report: This information collection is mandatory to obtain or retain a benefit [12 U.S.C. 1844(b) and (c)] and is given confidential treatment [5 U.S.C. 552(b)(4)].

Abstract: Bank holding companies that have received the Board's approval by Order to engage in limited underwriting and dealing in securities of a type which a bank may not underwrite or deal in directly file the FR Y-20. The report consists of a balance sheet, statement of income, supporting schedules for securities owned, and a statement of changes in stockholders' equity. In addition, there are several memoranda items which collect information on intercompany liabilities and off-balance sheet items, and information that is needed for an alternative measure of indexed-revenue. The revision, effective as of December 31, 1994, involves the addition of memoranda items on the income statement to collect year-to-date gross income, total expenses, and net income.

Board of Governors of the Federal Reserve System, January 23, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–2051 Filed 1–26–95; 8:45am]

BILLING CODE 6210–01–F

MNB Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 21, 1995.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. MNB Corporation, Bangor, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of The Merchants National Bank of Bangor, Bangor, Pennsylvania.

2. Republic Bancorporation, Inc., Philadelphia, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Republic Bank, Philadelphia, Pennsylvania.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Deposit Guaranty Corporation, Jackson, Mississippi; to merge with

Citizens National Bancshares, Inc., Hammond, Louisiana, and thereby indirectly acquire Citizens National Bank, Hammond, Louisiana.

2. SouthTrust Corporation, Birmingham, Alabama, and SouthTrust of Mississippi, Biloxi, Mississippi; to merge with CNB Capital Corporation, Pascagoula, Mississippi, and thereby indirectly acquire Citizens National Bank, Pascagoula, Mississippi.

3. Royal Bank Group of Acadiana Partnership, Lafayette, Louisiana; to become a bank holding company by acquiring 32 percent of LBA Bankgroup Inc., Lafayette, Louisiana, which will change its name to Royal Bankgroup of Acadiana Inc., Lafayette, Louisisna, and thereby indirectly acquire Bank of Lafayette, Lafayette, Louisiana and LBA Bank, Lafayette, Louisiana.

Bank Investors Limited Partnership, Lafayette, Louisiana owns 78 percent and Chance Investment Inc., Lafayette, Louisiana, owns 1 percent of LBA Bankgroup, Inc., Lafayette, Louisiana, and have applied to become bank holding companies and to acquire LBA Bank, Lafayette, Louisiana.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Wilmot Bank Holding Company, Wilmot, Arkansas; to become a bank holding company by acquiring 70.75 percent of the voting shares of Wilmot State Bank, Wilmot, Arkansas.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of United Texas Financial Corporation, Wichita Falls, Texas, and thereby indirectly acquire Parker Square Bank, N.A., Wichita Falls, Texas, and First State Bank, Archer City, Texas.

2. Norwest Corporation, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of Goldenbanks of Colorado, Inc., Golden, Colorado, and thereby indirectly acquire Goldenbank National Association, Golden, Colorado; Goldenbank National Association, Englewood, Colorado; Goldenbank National Association, Westminster, Westminster, Colorado; and Goldenbank, Applewood, Wheat Ridge, Colorado.

E. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Cullen/Frost Bankers, Inc., San Antonio, Texas; to merge with Valley Bancshares, Inc., McAllen, Texas, and thereby indirectly acquire The Valley National Bank, McAllen, Texas.

Board of Governors of the Federal Reserve System, January 23, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–2053 Filed 1–26–95; 8:45 am]

BILLING CODE 6210–01–F

National Bancorp, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 10, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. National Bancorp, Inc., Streamwood, Illinois; to engage *de novo* through its subsidiary National Bancorp Data System, Inc., Melrose Park, Illinois, in providing data processing and related services for Applicant's subsidiaries: AmericanMidwest Bank & Trust, Melrose Park, Illinois, and American National Bank of DeKalb County, Sycamore, Illinois, and also Applicant's affiliate bank: First Bank of Schaumburg, Inc., Schaumburg, Illinois, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 23, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–2054 Filed 1–26–95; 8:45 am]

BILLING CODE 6210–01–F

Norwest Corporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank

indicated for the application or the offices of the Board of Governors not later than

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire Stan-Shaw Corporation, Anaheim Hills, California, and thereby engage in acting as trustee under deeds of trust, preparing and filing notices of default, reconveyances and related documents, pursuant to § 225.25(b)(3) of the Board's Regulation Y.

2. Norwest Corporation, Minneapolis, Minnesota; to acquire Directors Mortgage Loan Corporation, Riverside, California, and thereby engage in (1) the origination, sale and servicing of residential single-family, first mortgage loans, the retention, purchase and sale of servicing rights associates with such mortgage loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y, and (2) the acquisition of 24.6 percent of Mission Savings and Loan Association, Riverside, California, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

3. Norwest Corporation, Minneapolis, Minnesota; to acquire Directors Insurance Service, Riverside, California, and thereby engage in (1) providing, as agent for various insurance underwriters, a full line of home mortgage insurance products, including mortgage life, flood, and earthquake insurance, pursuant to section 4(c)(8)(G) of the Bank Holding Company Act.

Board of Governors of the Federal Reserve System, January 23, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–2055 Filed 1–26–95; 8:45 am]

BILLING CODE 6210–01–F

John William Staley; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than February 10, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. John William Staley, Nashville, Tennessee; to retain 10.66 percent of the voting shares of First Pikeville Bancshares, Inc., Pikeville, Tennessee, and thereby retain shares of First National Bank of Pikeville, Pikeville, Tennessee.

Board of Governors of the Federal Reserve System, January 23, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–2056 Filed 1–26–95; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[File No. 921–0071]

Del Monte Foods Company, et al.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the California-based corporations to obtain, for ten years, Commission approval before acquiring any stock or assets of a United States canned fruit manufacturer, and before entering into a variety of marketing, packing, or other agreements with competitors.

DATES: Comments must be received on or before March 28, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Ronald Rowe, FTC/S–2105, Washington, DC 20580. (202) 326–2610.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii).

In the Matter of DEL MONTE FOODS COMPANY, a corporation; DEL MONTE CORPORATION, a corporation; and PACIFIC COAST PRODUCERS, a corporation, File No. 921–0071.

Agreement Containing Consent Order

The Federal Trade Commission (''Commission'') having initiated an investigation of certain agreements entered into by Del Monte Corporation, a wholly-owned subsidiary of Del Monte Foods Company (hereinafter collectively referred to as ''Del Monte''), and Pacific Coast Producers (''PCP''), and it now appearing that Del Monte and PCP, hereinafter sometimes referred to as ''proposed respondents,'' are willing to enter into an agreement containing an order (''Agreement'') to terminate such agreements between Del Monte and PCP, to cease and desist from certain acts, and to provide for certain other relief,

It is hereby agreed by and among proposed respondents, by their duly authorized officers and attorneys, and counsel for the Federal Trade Commission that:

1. Proposed respondent Del Monte Corporation, a wholly-owned subsidiary of Del Monte Foods Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at One Market Plaza, San Francisco, California 94119.

2. Proposed respondent Del Monte Foods Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business at One Market Plaza, San Francisco, California 94119.

3. Proposed respondent Pacific Coast Producers is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its office and principal place of business at 631 N. Cluff Avenue, Lodi, California 95240.

4. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint.

5. Proposed respondents waive:

a. any further procedural steps;

b. the requirement that the Commission's decision contain a

statement of findings of fact and conclusions of law;

c. all rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this Agreement; and

d. any claim under the Equal Access to Justice Act.

6. This Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

7. This Agreement is for settlement purposes only and does not constitute an admission by the proposed respondents that the law has been violated as alleged in the draft of the complaint, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

8. This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to terminate certain agreements entered into between Del Monte and PCP and to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same time provided by statute for other orders. The order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' addresses as stated in this Agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the Agreement may be used to vary or contradict the terms of the order.

9. Proposed respondents have read the proposed complaint and order contemplated hereby. Proposed respondents understand that once the order has been issued, they will be required to file verified written reports showing they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that, as used in this order, the following definitions shall apply.

A. ''Del Monte Corporation'' means Del Monte Corporation, its predecessors, subsidiaries, divisions, groups and affiliates controlled by Del Monte Corporation, and their respective directors, officers, employees, agents, and their respective successors and assigns.

B. ''Del Monte'' means Del Monte Foods Company, its predecessors, subsidiaries (including Del Monte Corporation), divisions, groups and affiliates controlled by Del Monte Foods Company, and their respective directors, officers, employees, agents, and their respective successors and assigns.

C. ''PCP'' means Pacific Coast Producers, its predecessors, subsidiaries, divisions, groups and affiliates controlled by Pacific Coast Producers, and their respective directors, officers, employees, members, agents, and their respective successors and assigns.

D. ''Respondents'' means PCP and Del Monte (including Del Monte Corporation).

E. ''Commission'' means the Federal Trade Commission.

F. ''Canned Fruit'' means peaches, pears, fruit cocktail, and fruit mix, which consists primarily of diced peaches and diced pears, that are processed and canned.

G. ''Option Agreement'' means the Option Agreement between Del Monte Corporation and Pacific Coast Producers entered into on May 4, 1992, pursuant to which Del Monte acquired and PCP conveyed an exclusive and irrevocable option to purchase certain rights in, and title to, certain assets of PCP, including long term contracts with growers.

H. ''Supply Agreement'' means the Supply Agreement between Del Monte Corporation and Pacific Coast Producers entered into on May 4, 1992, pursuant to which Del Monte agreed to purchase virtually all of PCP's output of Canned Fruit, canned tomatoes, and canned apricots.

I. ''Spot Market'' means *ad hoc* inter-canner transactions for Canned Fruit placed on an irregular basis where all Canned Fruit ordered under such an arrangement is delivered within nine weeks of placing the order.

J. ''Tri Valley Growers'' means Tri Valley Growers, its predecessors, subsidiaries, divisions, groups and affiliates controlled by Tri Valley Growers, and their respective directors, officers, employees, members, agents, and their respective successors and assigns.

II

It is further ordered that:

A. Within three (3) days after the date this order becomes final, Respondents shall terminate the Option Agreement;

B. Within three (3) days after the date this order becomes final, Respondents shall declare null and void the following paragraphs of the Supply Agreement: Paragraph 2, subparagraphs (b), (c), (e), and (f), Paragraph 23, Paragraph 24, and Paragraph 25 as it relates to the budget for canning after June 30, 1995; and

C. On or before June 30, 1995, Respondents shall absolutely and in good faith terminate the Supply Agreement.

III

It is further ordered that, for a period of ten (10) years from the date this order becomes final, Del Monte shall not, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any stock, share capital, equity, or other interest in any concern, corporate or non-corporate, engaged, at the time of such acquisition or within the two years preceding such acquisition, in the manufacture of any type of Canned Fruit in the United States; provided, however, that an acquisition shall be exempt from the requirements of this paragraph if it is solely for the purpose of investment and Del Monte will not hold more than one percent of the shares of any publicly traded class of security; or

B. Acquire any assets, other than in the ordinary course of business, used for or used anytime within the two years preceding such acquisition for (and still suitable for use for) the manufacture of any type of Canned Fruit in the United States; provided, however, that an acquisition of assets will be exempt from the requirements of this paragraph

if the purchase price of the assets-to-be-acquired does not exceed $1,500,000.00, and the purchase price of all assets used for, or previously used for (and still suitable for use for) the manufacture of any type of Canned Fruit in the United States that Del Monte has acquired from the same person (as that term is defined in the premerger notification rules, 16 C.F.R. § 801.1(a)(1)) in the twelve-month period preceding the proposed acquisition, when aggregated with the purchase price of the to-be-acquired assets, does not exceed $1,500,000.

IV

It is further ordered that, for a period of ten (10) years from the date this order becomes final, unless Del Monte is required to seek prior approval from the Commission pursuant to Paragraph III, and unless Del Monte has obtained such prior approval, Del Monte shall not, without providing advance written notification to the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise, acquire any assets, other than in the ordinary course of business, used for or used anytime within the two years preceding such acquisition for (and still suitable for use for) the manufacture of any type of Canned Fruit in the United States.

The notification required by this paragraph shall be provided to the Commission at least thirty (30) days prior to the acquisition. Such notification shall include a description of the assets to be acquired, the purchase price, the name of the person from whom the assets are to be acquired, including the name of the individual employed by such person that is most knowledgeable about the proposed acquisition, Del Monte's purpose in acquiring the assets from such person, and the use to which Del Monte intends to put such assets. Del Monte shall comply with reasonable requests from Commission staff for additional information within ten (10) days of service of such requests.

V

It is further ordered that, for a period of ten (10) years from the date this order becomes final, Del Monte shall not, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Except with respect to agreements covered by Paragraphs V.B, VI, VII, and VIII, enter into any agreement or other arrangement to purchase or market any type of Canned Fruit with any corporate or non-corporate entity, engaged, at the time of entering into such agreement or other arrangement or within two years preceding entering into such agreement or other arrangement, in the manufacture of any type of Canned Fruit in the United States; provided, however, that entering into such an agreement or other arrangement will be exempt from the requirements of this paragraph if the agreement or other arrangement is for the purchase of Canned Fruit on the Spot Market; or

B. Enter into any agreement or other arrangement with Tri Valley Growers to have any type of Canned Fruit manufactured on Del Monte's behalf.

VI

It is further ordered that:

A. for a period of five (5) years from the date this order becomes final, Del Monte shall not, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise, except with respect to agreements covered by Paragraphs V, VII, and VIII, enter into any agreement or other arrangement to have any type of Canned Fruit manufactured on Del Monte's behalf (''co-pack agreement'') with any corporate or non-corporate entity, engaged, at the time of entering into such co-pack agreement or within the two years preceding entering into such co-pack agreement, in the manufacture of any type of Canned Fruit in the United States;

B. For a period beginning on the fifth anniversary of the date this order becomes final until ten years from the date this order becomes final, Del Monte shall not, without providing advance written notification to the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise, except with respect to agreements covered by Paragraphs V, VII, and VIII, enter into any agreement or other arrangement to have any type of Canned Fruit manufactured on Del Monte's behalf (''co-pack agreement'') with any corporate or non-corporate entity, engaged, at the time of entering into such co-pack agreement or within the two years preceding entering into such co-pack agreement, in the manufacture of any type of Canned Fruit in the United States. Said notification shall be provided to the Commission by Del Monte thirty (30) days before the entity begins manufacturing the Canned Fruit pursuant to such co-pack agreement. Said notification shall include a copy of the proposed co-pack agreement and all schedules and attachments. Del Monte shall comply with reasonable requests from Commission staff for additional information concerning such co-pack agreements within ten (10) days of service of such requests.

VII

It is further ordered that, for a period of ten (10) years from the date this order becomes final, Respondents shall not, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise, enter into an agreement requiring PCP to manufacture any type of Canned Fruit on behalf of Del Monte (''co-pack agreement''); provided, however, that such a co-pack agreement between Del Monte and PCP will be exempt from the requirements of this paragraph if the aggregate of all co-pack agreements entered into in any calendar year meet all of the following criteria: 1) the amount of retail sizes (net weight under two pounds) does not exceed ten percent of PCP's output of Canned Fruit, measured in basic cases (24 2½ can sizes), manufactured in the same year as the Canned Fruit manufactured pursuant to the co-pack agreements; 2) the amount of peaches grown by PCP used for the co-pack agreements does not exceed 8,000 tons in any year and none of PCP's peaches is used for retail sizes manufactured pursuant to the co-pack agreements, and 3) the total amount of the Canned Fruit manufactured pursuant to the co-pack agreements a) in each of the years 1995 and 1996 constitutes forty (40) percent or less of PCP's output of Canned Fruit manufactured in each of those years, measured in basic cases; and b) in each year thereafter constitutes thirty (30) percent or less of PCP's output of Canned Fruit manufactured in that year, measured in basic cases.

VIII

It is further ordered that, for a period of ten (10) years from the date this order becomes final, unless Respondents are required to seek prior approval from the Commission pursuant to Paragraph VI, and unless Respondents have obtained such prior approval, Respondents shall not, without providing advance written notification to the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise, enter into a co-pack agreement with each other. Said notification shall be provided to the Commission by PCP on or before March 1 of each year in which Del Monte and PCP plan to enter into a co-pack agreement. Said notification shall include a copy of the proposed co-pack agreement, all schedules and attachments, the amount of the planned co-pack stated in basic areas (24 2½ can sizes) and the amount, stated in basic cases, for PCP's planned production of Canned Fruit for the same year.

IX

It is further ordered that:

A. Within thirty (30) days after the date this order becomes final and every sixty (60) days thereafter until the Supply Agreement is terminated, Respondents shall submit to the Commission a verified written report setting forth in detail the steps taken to comply with Paragraph II of the order; and

B. One year (1) from the date this order becomes final, annually for the next nine (9) years on the anniversary of the date this order becomes final, and at such other times as the Commission may require, Respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which each has complied and is complying with the provisions of this order.

X

It is further ordered that each of the Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in such Respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in such Respondent that may affect compliance obligations arising out of the order.

XI

It is further ordered that, for the purpose of determining or securing compliance with this order, and subject to any legally recognized privilege, upon written request and on reasonable notice to Respondents, each of the Respondents shall permit any duly authorized representative of the Commission.

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such Respondent relating to any matters contained in this order; and

B. Upon five days' notice to such Respondent and without restraint or interference from it, to interview officers, directors, or employees of such Respondent, who may have counsel present, regarding such matters.

Analysis To Aid Public Comment on the Provisionally Accepted Consent Order

The Federal Trade Commission (''the Commission'') has accepted for public comment from Del Monte Foods Company, Del Monte Corporation (''Del Monte''), and Pacific Coast Producers (''PCP'') and agreement containing consent order. This agreement has been placed on the public record for sixty days for reception of comments from interested persons.

Comments received during this period will become part of the public record. After sixty days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's order.

The Commission's investigation of this matter concerns a supply agreement between Del Monte and PCP that commenced in July of 1992. The effect of the supply agreement was that Del Monte acquired the business of PCP, and PCP was no longer a competitor in the market for canned peaches, pears, fruit cocktail, and fruit mix (''canned fruit''). The supply agreement also contained an option agreement by which Del Monte had the right to purchase PCP outright. The agreement containing consent order would, if finally accepted by the Commission, settle charges alleged in the Commission's complaint that the supply agreement and option agreement substantially lessened competition in the sale of canned fruit in the United States and that Del Monte entered into such agreements with the effect of restraining, lessening, or eliminating competition, or acquiring or maintaining market power in the same market. The Commission's complaint further alleges that such agreements had and will have anticompetitive effects and that, in entering into such agreements, respondents violated Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act.

The order accepted for public comment contains provisions that would require that Del Monte and PCP terminate the supply agreement in June of 1995 and terminate the option agreement and certain provisions of the supply agreement within three days after the date the order becomes final. The provisions of the supply agreement that would require termination within three days relate to planning for the 1995 canning season. The purpose of the delay in terminating the entire supply agreement is to assure the orderly return of PCP to the market as a viable operation engaged in the sale of canned fruit in the United States. The delay permits PCP time to plan for the manufacture of fruit for the 1995 canning season and obtain customers for that fruit, without the pressure of marketing last year's inventory.

For a period of ten years from the date the order becomes final, the order would also prohibit Del Monte from acquiring, without prior Commission approval, stock in or assets of an entity engaged in the manufacture of any type of canned fruit in the United States. Acquisitions, for investment purposes only, of less than 1% of the outstanding stock of a publicly-traded company would be exempt from the prior approval provision.

Acquisitions of certain assets valued at less than $1.5 million would also be exempt from the prior approval provision, but the order would require that Del Monte give 30 days' notice to the Commission before consummating the acquisition.

For a period of ten years from the date the order becomes final, the order would also prohibit Del Monte, without obtaining prior Commission approval, from entering into an agreement to buy canned fruit from, or market canned fruit for, a person engaged in the manufacture of canned fruit in the United States. Del Monte would not, however, have to obtain prior Commission approval for purchases made on the spot market.

For a period of ten years from the date the order becomes final, the order would also prohibit Del Monte, without obtaining prior Commission approval, from having canned fruit packed on Del Monte's behalf (''co-pack'') by Tri Valley Growers or PCP. Tri Valley Growers is a large manufacturer of canned fruit. Del Monte and PCP may enter into a co-pack agreement for canned fruit, without obtaining prior Commission approval, if the following conditions are met: (1) The amount of PCP's peaches used in the co-pack for Del Monte does not exceed 8,000 tons in any year; (2) the amount or retail sizes packed under the co-pack does not exceed 10% of PCP's output; (3) the total amount of the co-pack does not exceed 40% of PCP's output in each of the first two years after the order becomes final and 30% of PCP's output in each year thereafter. Prior to entering into the supply agreement that is the subject of this compliant, PCP co-packed canned fruit for Del Monte.

For a period of five years from the date the order becomes final, the order would also prohibit Del Monte, without obtaining prior Commission approval, from having canned fruit packed on Del Monte's behalf (''co-pack'') by any entity engaged in the manufacture of canned fruit. In years six through ten, Del Monte would have to provide prior notice to the Commission of such a co-pack, but would not need to obtain prior approval.

The purpose of this analysis is to invite public comment concerning the consent order and any other aspect of

this matter. This analysis is not intended to constitute an official interpretation of the agreement and order or to modify its terms in any way.

Donald S. Clark,

Secretary.

Concurring Statement of Commissioner Roscoe B. Starek, III

In the Matter of Del Monte Foods Company/Pacific Coast Producers, File No. 921 0071.

In voting to accept the agreement containing consent order in this matter, I have overcome my reluctance to support an order that at first blush appeared to contain certain inordinately regulatory provisions. As a general proposition, I prefer clear, simple, easily enforceable cease-and-desist language over orders that establish complex metes and bounds for permissible conduct.

Some provisions of the present order—Paragraph VII is the extreme example—seem to prescribe the behavior of Del Monte and Pacific Coast Producers (''PCP'') with an unfortunate degree of detail. Despite the detailed nature of those provisions, however, the order is unlikely to place undue constraints on the parties' operations. In particular, the ''regulatory''-looking proviso to Paragraph VII clearly constitutes a substantial accommodation—*i.e.*, an exception to what would otherwise be a moratorium on co-pack arrangements between Del Monte and PCP—designed to allow the parties to realize efficiencies. To the extent that the parties need even more latitude than that proviso affords, Paragraph VII allows them to seek the Commission's approval for a more extensive co-pack arrangement. Thus, if the parties wish to expand their co-pack agreement beyond what the proviso to Paragraph VII contemplates, the paragraph operates as it should: it puts on the parties the burden of establishing that a more extensive arrangement will yield net efficiencies.

[FR Doc. 95–2058 Filed 1–26–95; 8:45 am]

BILLING CODE 6750–01–M

[File No. 951 0007]

HEALTHSOUTH Rehabilitation Corporation; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, HEALTHSOUTH, an Alabama-based corporation, to divest Nashville Rehabilitation Hospital and related assets in Nashville, TN. within twelve months to a Commission approved entity. If the divestiture is not completed on time, the Commission would be permitted to appoint a trustee to complete the transaction. In addition, the consent agreement would require HEALTHSOUTH to terminate management contracts to operate rehabilitation units at Medical Center East in Birmingham, AL. and Roper Hospital in Charleston, S.C. Also, the consent agreement would require HEALTHSOUTH, for ten years, to obtain Commission approval before merging, by acquisition, lease, management contract or otherwise, any of its rehabilitation hospital facilities in any of the three areas with any competing facilities in those areas.

DATES: Comments must be received on or before March 28, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Mark Horoschak or Oscar Voss, FTC/S–3115, Washington, D.C. 20580. (202) 326–2756 or 326–2750.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the matter of HEALTHSOUTH REHABILITATION CORPORATION, a corporation,

Agreement Containing Consent Order

The Federal Trade Commission (''Commission''), having initiated an investigation of the proposed merger of ReLife, Inc. with HEALTHSOUTH Rehabilitation Corporation (''HEALTHSOUTH''), and it now appearing that HEALTHSOUTH, hereinafter sometimes referred to as ''proposed respondent,'' is willing to enter into an agreement containing an order to divest certain assets and to cease and desist from making certain acquisitions, and providing for other relief:

It is hereby agreed by and between the proposed respondent, by its duly authorized officer and attorney, and counsel for the Commission that:

1. Proposed respondent HEALTHSOUTH is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at Two Perimeter Park South, Birmingham, Alabama 35243.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by the proposed respondent that the law has been violated as alleged in the draft of complaint or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may , without further notice to the proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to divest and to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the order shall have the same

force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. Proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered, that as used in this order, the following definitions shall apply:

A. ''Respondent'' or ''HEALTHSOUTH'' means HEALTHSOUTH Rehabilitation Corporation, its predecessors, subsidiaries, divisions, and partnerships, joint ventures, groups, and affiliates controlled by HEALTHSOUTH; their respective directors, officers, employees, agents, and representatives; and their respective successors and assigns.

B. The ''Acquisition'' means the merger of ReLife, Inc. with HEALTHSOUTH, pursuant to their merger agreement dated September 18, 1994.

C. ''Rehabilitation hospital facility'' means a hospital, or distinct part thereof or unit therein with beds licensed as hospital beds, that specializes in the provision of comprehensive, acute inpatient medical rehabilitation care to patients requiring intensive, multidisciplinary rehabilitation treatment programs, such as patients suffering from stroke, head injury, spinal cord injury, amputation, severe fractures, or neuromuscular diseases.

D. To ''acquire'' a rehabilitation hospital facility means to directly or indirectly, through subsidiaries, partnerships, or otherwise, acquire the whole or any part of the stock, share capital, equity, or other interest in a person who operates the rehabilitation hospital facility; acquire any assets of the rehabilitation hospital facility; enter into any agreement or other arrangement to obtain direct or indirect ownership, management, or control of the rehabilitation hospital facility or any part thereof, including but not limited to, a lease of or management contract for any such rehabilitation hospital facility, or an agreement to replace the rehabilitation hospital facility with a new rehabilitation hospital facility to be operated by respondent; or acquire or otherwise obtain the right to designate, directly or indirectly, directors or trustees of any rehabilitation hospital facility.

E. To ''operate'' a rehabilitation hospital facility means to own, lease, manage, or otherwise control or direct the operations of a rehabilitation hospital facility, directly or indirectly.

F. ''Affiliate'' means any entity whose management and policies are controlled in any way, directly or indirectly, by the person with whom it is affiliated.

G. ''Relevant market area'' means each of the following areas:

1. The ''Birmingham metropolitan area,'' consisting of Blount, Jefferson, St. Clair, and Shelby counties in Alabama;

2. The ''Charleston metropolitan area,'' consisting of Berkeley, Charleston, and Dorchester counties in South Carolina; and

3. The ''Nashville metropolitan area,'' consisting of Cheatham, Davidson, Dickson, Robertson, Rutherford, Summer, Williamson, and Wilson counties in Tennessee.

H. ''Person'' means any natural person, partnership, corporation, company, association, trust, joint venture, or other business or legal entity, including any governmental agency.

I. ''Commission'' means the Federal Trade Commission.

J. ''Material confidential information'' means competitively sensitive or proprietary information not independently known to respondent from sources other than the rehabilitation hospital facility to which that information pertains, including but not limited to customer lists, price lists, marketing methods, patents, technologies, processes, or other trade secrets.

II

It is further ordered that:

A. Respondent shall divest, absolutely and in good faith, within twelve (12) months of the date this order becomes final, all of its rights, title, and interests in and to all tangible and intangible assets, businesses, goodwill, properties, lands, licenses, and leases relating to Nashville Rehabilitation Hospital, a general acute care hospital in Nashville, Tennessee which contains a rehabilitation hospital facility (''assets to be divested''). Respondent shall divest the assets only to an acquirer or acquirers that receive the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission. Respondent may, but is not required to, divest to said acquirer(s) the management contract under which ReLife, Inc. operates the rehabilitation hospital facility at Sumner Memorial Hospital in Gallatin, Tennessee, or otherwise transfer operation of that facility to said acquirer(s), if Sumner Memorial consents to the transfer. The purpose of the divestiture is to ensure the continuation of the rehabilitation hospital facility of Nashville Rehabilitation Hospital as an ongoing, viable rehabilitation hospital facility, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

B. Respondent shall unconditionally terminate, absolutely and in good faith, the following management contracts, and cease operating the rehabilitation hospital facilities to which those contracts pertain:

1. By no later than October 1, 1995, the Rehabilitation Unit Management Agreement between ReLife, Inc. and Roper Hospital, dated December 6, 1991, under which ReLife operates the rehabilitation hospital facility at Roper Hospital in Charleston, South Carolina; and

2. Within ninety (90) days of the date this order becomes final, the Consulting Services Contract between HEALTHSOUTH Rehabilitation Corp. and Medical Center East, Inc. dated January 1, 1990, as amended, under which HEALTHSOUTH operates the rehabilitation hospital facility at Medical Center East in Birmingham, Alabama.

Provided, however, that respondent may contract with Medical Center East to provide to that hospital's rehabilitation hospital facility the services of licensed physical, occupational, or speech therapists, so long as the therapists provided by respondent do not perform managerial functions at the facility, or supervise

personnel except other therapists provided by respondent.

C. By no later than the termination of each contract identified in Paragraph II.B. above, respondent shall enter into an agreement with the hospital whose rehabilitation hospital facility was operated under such contract (the ''managed hospital''), that:

1. Prohibits respondent from using, in connection with respondent's operation of any rehabilitation hospital or other health care facility in the relevant market area where the managed hospital is located, any material confidential information of the managed hospital's rehabilitation hospital facility; and

2. Confers upon the managed hospital a legal right to enforce the prohibition set forth above in Paragraph II.C.1.

D. Respondent shall comply with all terms of the Agreement to Hold Separate, attached hereto and made a part hereof as Appendix I. Said Agreement to Hold Separate shall continue in effect until such time as respondent has fulfilled the divestiture requirements of this order or until such other time as the Agreement to Hold Separate provides.

E. Pending the divestiture required by Paragraph II.A. above, and the contract terminations required by Paragraph II.B. above, respondent shall take such actions as are necessary to maintain the viability, competitiveness, and marketability of the assets to be divested and of the rehabilitation hospital facilities operated under the contracts to be terminated, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the those assets, except for ordinary wear and tear.

F. A condition of approval by the Commission of the divestiture required by Paragraph II.A. shall be a written agreement by the acquirer that it will not, for a period of ten (10) years from the date of divestiture, directly or indirectly, through subsidiaries, partnerships, or otherwise, without the prior approval of the Commission, sell or otherwise transfer all or substantially all of the rehabilitation hospital facility of Nashville Rehabilitation Hospital to any person who operates, or will operate immediately following such sale or transfer, any other rehabilitation hospital facility in the Nashville metropolitan area as defined in Paragraph I.G.3. above.

III

It is further ordered that:

A. If the respondent has not divested, absolutely and in good faith and with the Commission's prior approval, the assets to be divested identified in Paragraph II.A. above, in accordance with this order, within twelve (12) months of the date this order becomes final, the Commission may appoint a trustee to divest such assets. In the event that the Commission or the Attorney General brings an action for any failure to comply with this order or in any way relating to the Acquisition, pursuant to 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. 45(*l*), or any other statute enforced by the Commission, the respondent shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court appointment of a trustee pursuant to Section 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. 45(*l*), or any other statute enforced by the Commission, for any failure by the respondent to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph III.A. of this order, respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of the respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to respondent of the identity of any proposed trustee, respondent shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the assets identified in Paragraph II.A. above.

3. Within ten (10) days after appointment of the trustee, respondent shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestitures required by this order.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph III.B.3. to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or in the case of a court-appointed trustee, by the court; provided however, the Commission may extend this period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records, and facilities related to the assets identified in Paragraph II.A. above, or to any other relevant information as the trustee may request. Respondent shall develop such financial or other information as such trustee may reasonably request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by respondent shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to the respondent's absolute and unconditional obligation to divest at no minimum price. The divestiture shall be in the manner and to acquirer(s) as set out in Paragraph II of this order; provided, however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity selected by respondent from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of the respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the

direction of the respondent and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the assets set forth in Paragraph II.A. above.

8. Respondent shall identify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III.A. of this order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative, or at the request of the trustee, issue such additional orders or directions as they may be necessary or appropriate to accomplish the divestiture required by this order.

11. The trustee shall have no obligation or authority to operate or maintain the assets identified in Paragraph II.A. above.

12. The trustee shall report in writing to the respondent and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

IV

It is further ordered that, for a period of ten (10) years from the date this order becomes final, respondent shall not, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any stock, share capital, equity, or other interest in any person who operates any rehabilitation hospital facility in any relevant market area;

B. Acquire any assets of any rehabilitation hospital facility in any relevant market area;

C. Enter into any agreement or other arrangement to obtain direct or indirect ownership, management, or control of any rehabilitation hospital facility or any part thereof in any relevant market area, including but not limited to, a lease of or management contract for any such rehabilitation hospital facility, or an agreement to replace a rehabilitation hospital facility operated by another person with a rehabilitation hospital facility to be operated by respondent;

D. Acquire or otherwise obtain the right to designate, directly or indirectly, directors or trustees of any rehabilitation hospital facility in any relevant market area; or

E. Permit any rehabilitation hospital facility it operates in any relevant market area to be acquired (in whole or in part, by stock acquisition, asset acquisition, lease, management contract, establishment of a replacement facility, right to designate directors or trustees, or otherwise) by any person who operates, or will operate immediately following such acquisition, any other rehabilitation hospital facility in that relevant market area.

Provided, however, that prior approval shall not be required by this Paragraph IV for:

1. The establishment of a new rehabilitation hospital facility (other than as a replacement for a rehabilitation hospital facility, not operated by respondent, in any relevant area, pursuant to an agreement or understanding between respondent and the person operating the replaced facility);

2. Any transaction otherwise subject to this Paragraph IV of this order if the fair market value of (or, in case of a purchase acquisition, the consideration to be paid for) the rehabilitation hospital facility or part thereof to be acquired does not exceed five hundred thousand dollars ($500,000);

3. Any transaction otherwise subject to this Paragraph IV of this order if the rehabilitation hospital facility in question is already operated by respondent (unless respondent is required by Paragraph II of this order to cease operating the facility); or

4. The acquisition of products or services in the ordinary course of business.

V

It is further ordered that, for a period of ten (10) years from the date this order becomes final, respondent shall not, directly or indirectly, through subsidiaries, partnerships or otherwise, without providing advance written notification to the Commission, consummate any joint venture or other arrangement with any rehabilitation hospital facility in any relevant market area not operated by respondent, for the joint establishment or operation of any new rehabilitation hospital service, facility, or part thereof in that relevant market area. Such advance notification shall be filed immediately upon respondent's issuance of a letter of intent for, or execution of an agreement to enter into, such a transaction, whichever is earlier.

Said notification required by this Paragraph V of this order shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations (as amended), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification need not be made to the United States Department of Justice, and notification is required only of respondent and not of any other party to the transaction. Respondent is not required to observe any waiting period after making said notification required by this Paragraph V.

Respondent shall comply with reasonable requests by the Commission staff for additional information concerning any transaction subject to this Paragraph V of this order, Within fifteen (15) days of receipt of such requests.

Provided, however, that no transaction shall be subject to this Paragraph V of this order if:

A. The fair market value of the assets to be contributed to the joint venture or other arrangement, by rehabilitation hospital facilities not operated by respondent, does not exceed five hundred thousand dollars ($500,000);

B. The fair market value of the assets to be contributed to the joint venture or other arrangement by respondent does not exceed five hundred thousand dollars ($500,000);

C. The service, facility, or part thereof to be established or operated in a transactions subject to this order is to engage in no activities other than the provision of the following services: laundry; data processing; purchasing; materials management; billing and collection; dietary; industrial engineering; maintenance; printing; security; records management; laboratory testing; personnel education, testing, or training; or health care financing (such as through a health maintenance organization or preferred provider organization); or

D. Notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a, or prior approval by the Commission is required, and has been requested, pursuant to Paragraph IV of this order.

VI

It is further ordered that, for a period of ten (10) years from the date this order becomes final, respondent shall not sell or otherwise transfer to any other person

all or substantially all of any rehabilitation hospital facility it operates in any relevant market area (except pursuant to a divestiture required by Paragraph II of this order), unless the acquiring person files with the Commission, prior to the closing of such acquisition, a written agreement to be bound by the provisions of this order as applicable to the facility and the relevant market area in which the acquired facility is located, which agreement respondent shall require as a condition precedent to the acquisition.

VII

It is further ordered that:

A. Within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until the respondent has fully complied with Paragraphs II and III of this order, the respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with Paragraphs II and III of this order. Respondent shall include in its compliance reports, among other things that are required from time to tome, a full description of the efforts being made to comply with Paragraphs II and III of the order, including a description of all substantive contracts or negotiations for the divestiture of the assets identified in Paragraph II.A. above, the steps taken to terminate the contracts identified in Paragraph II.B. above, and the identity of all parties contacted. Respondent shall also include in its compliance reports, subject to any legally recognized privilege, copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

B. One (1) year from the date this order becomes final, annually for the next nine (9) years on the anniversary of the date this order becomes final, and at other times as the Commission may require, respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and it is complying with Paragraphs IV, V, and VI of this order.

VIII

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the order.

IX

It is further ordered that, for the purpose of determining or securing compliance with this order, and subject to any legally recognized privilege, the respondent shall permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the respondent relating to any matters contained in this order; and

B. Upon five days; notice to respondent and without restraint or interference from it, to interview officers, directors, or employees of respondent.

In the matter of HEALTH REHABILITATION CORPORATION, a corporation File No. 951–0007.

Agreement to Hold Separate

This agreement to Hold Separate (''Agreement'') is by and between HEALTHSOUTH Rehabilitation Corporation (''respondent'' or ''HEALTHSOUTH''), a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business at Two Perimeter Park South, Birmingham, Alabama 35243; and the Federal Trade Commission (''Commission''), and independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.*

Whereas, on or before September 18, 1994, HEALTHSOUTH agreed to merge with ReLife, Inc. (''Relife''), and thereby acquire, *inter alia,* a majority partnership interest in Nashville Rehabilitation Hospital in Nashville, Tennessee (the ''Acquisition''); and

Whereas, The Commission is now investigating the Acquisition to determine if it would violate any of the status enforced by the Commission; and

Whereas, if the Commission accepts the Agreement Containing Consent Order in this matter (''Consent Order''), which would require the divestiture of ReLife's majority partnership interest in, and certain other assets listed in Paragraph II.A. of the Consent Order Relating to, Nashville Rehabilitation Hospital (which assets, together with the Hospital, hereinafter are referred to as the ''NRH Assets''), the Commission must place the Consent Order on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving the *status quo ante* of the NRH Assets during the period prior to the final acceptance and issuance of the Consent Order by the Commission (after the 60-day public comment period), divestiture resulting from any proceeding challenging the legality of the Acquisition might not be possible, or might be less than an effective remedy; and

Whereas, the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to compel the divestiture required by Paragraphs II.A. and III of the Consent Order and the Commission's right to have NRH Assets continue as a viable independent rehabilitation hospital facility; and

Whereas, the purpose of this Agreement and the Consent Order is to:

(i) Preserve the NRH Assets as a viable independent inpatient rehabilitation hospital facility pending the divestiture required by Paragraphs II.A. and III of the Consent Order, and

(ii) Remedy any anticompetitive effects of the Acquisition;

Whereas, respondent's entering into this Agreement shall in no way be construed as an admission by respondent that the Acquisition is illegal; and

Whereas, respondent understands that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, therefore, the parties agree as follows, upon understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Order, it will not seek further relief from respondent with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement and the Consent Order to which it is annexed and made a part thereof, and in the event the required divestiture is not accomplished, to appoint a trustee to seek divestiture of the NRH Assets pursuant to the Consent Order:

1. Respondent agrees to execute the Agreement Containing Consent Order

and be bound by the attached Consent Order.

2. Respondent agrees that from the date this Agreement is accepted until the earliest of the times listed in subparagraphs 2.a or 2.b., it will comply with the provisions of paragraph 3 of this Agreement:

a. Three (3) business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of Section 2.34 of the Commission's Rules; or

b. The time that the divestiture required by the Consent Order has been completed.

3. Respondent will hold the NRH Assets as they are presently constituted separate and apart, on the following terms and conditions:

a. The NRH Assets, as they are presently constituted, shall be held separate and apart and shall be operated independently of respondent (meaning here and hereinafter, HEALTHSOUTH excluding the NRH Assets), except to the extent that respondent must exercise direction and control over the NRH Assets to assure compliance with this Agreement or the Consent Order and except as otherwise provided in this Agreement.

b. HEALTHSOUTH shall appoint a Management Committee to manage and maintain the NRH Assets on a day-to-day basis while this Agreement remains in effect. The Management Committee shall have exclusive management and control of the NRH Assets, and shall manage the NRH Assets independently of HEALTHSOUTH's other businesses.

c. The Management Committee, which shall be appointed by HEALTHSOUTH, shall consist of three or five members, including a chairman who is independent of respondent and is competent to assure to continued viability and competitiveness of the NRH Assets; a person with experience in operating rehabilitation hospital facilities; and a HEALTHSOUTH controller or other financial officer, whose responsibilities do not include any participation in HEALTHSOUTH's operations in the Nashville metropolitan area as defined in Paragraph I.G. of the Consent Order. No more than a minority of Management Committee members shall be directors, officers, employees, or agents of respondent (''respondent's Management Committee members''). Meetings of the Management Committee during the term of this Agreement shall be audio recorded, and recordings shall be retained for two (2) years after the termination of this Agreeement.

d. Respondent shall not exercise direction or control over, or influence directly or indirectly, the NRH Assets, any associated operations or businesses, the Management Committee, or the independent chairman of the Management Committee; provided, however, that respondent may exercise only such direction and control over the Management Committee as is necessary to assure compliance with this Agreement or the Consent Order.

e. Respondent shall maintain the viability, competitiveness, and marketability of the NRH Assets, and shall not sell, transfer, encumber (other than in the normal course of business, or to effect the divestitures contemplated by the consent order), or otherwise impair their viability, competitiveness, or marketability.

f. The NRH Assets shall be staffed with employees sufficient in numbers and skills to maintain the viability, competitiveness, and marketability of the Hospital and the NRH Assets, which employees shall be selected from the existing employee base of the NRH Assets, and may also be hired from other sources. To this end, respondent shall maintain at least the same ratios of full-time equivalent employees to inpatient days, for professional employee staff (Such as nurses and therapists), and for other staff employees, as exist at the date of this Agreement, and shall offer salaries and employee benefits sufficient to maintain such staffing levels and maintain quality of patient care at least substantially equivalent to that now provided by the employees of the NRH Assets.

g. With the exception of respondent's Management Committee members, respondent shall not change the composition of the Management Committee unless the independent chairman consents to such change. The independent chairman shall have power to remove members of the Management Committee for cause. Respondent shall not change the composition of the management of the NRH Assets, except that the Management Committee shall have the power to remove management employees for cause.

h. If the independent chairman ceases to act or fails to act diligently, a substitute chairman shall be appointed in the same manner as provided in Paragraph 3.c. of this Agreement.

i. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the Acquisition, defending investigations, defending or prosecuting litigation, negotiating agreements to divest assets, or complying with this agreement or the Consent Order, respondent shall not receive, have access to, use, or continue to use, any material confidential information (as that term is defined in the Consent Order) not in the public domain about the NRH Assets, or the activities of the Management Committee. Nor shall the NRH Assets or the Management Committee receive or have access to, or use or continue to use, any material confidential information not in the public domain about respondent that relates to rehabilitation hospital facilities operated by respondent in the Nashville metropolitan area as defined in Paragraph I.G. of the Consent Order. Respondent may receive on a regular basis aggregate financial information relating to the NRH Assets necessary and essential to allow respondent to prepare United States consolidated financial reports, tax returns, and personnel reports. Any such information that is obtained pursuant to this subparagraph shall be used only for the purpose set forth in this subparagraph.

j. Except as permitted by this Agreement, respondent's Management Committee members shall not, in their capacity as Management Committee members, receive material confidential information of the NRH Assets, and shall not disclose any such information received under this Agreement to respondent, or use it to obtain any advantage for respondent. Each of respondent's Management Committee members shall enter a confidentiality agreement prohibiting disclosure of material confidential information. Respondent's Management Committee members shall participate in matters that come before the Management Committee only for the limited purposes of considering a capital investment or other transaction exceeding $100,000, approving any proposed budget and operating plans, and carrying out respondent's responsibilities under this Agreement, the Consent Agreement, and the Consent Order. Except as permitted by this Agreement, respondent's Management Committee members shall not participate in any matter, or attempt to influence the votes of the other members of the Management Committee with respect to matters, that would involve a conflict of interest if respondent and the NRH Assets were separate and independent entities.

k. Any material transaction relating to the NRH Assets that is out of the ordinary course of business must be approved by a majority vote of the Management Committee; provided that the Management Committee shall approve no transaction, material or otherwise, that is precluded by this Agreement.

l. All earnings and profits of the NRH Assets shall be retained separately. If

necessary, respondent shall provide the NRH Assets with sufficient working capital to maintain the current rate of operation of the NRH Assets, and to carry out any capital improvement plans which have been approved.

m. HEALTHSOUTH shall continue to provide the same support services to the NRH Assets, which are not provided by that hospital's employees, as are being provided by ReLife to the hospital as of the date this Agreement is signed. HEALTHSOUTH may charge the NRH Assets the same fees, if any, charged by ReLife for such support services as of the date of this Agreement. HEALTHSOUTH personnel providing such support services must retain and maintain all material confidential information of the NRH Assets on a confidential basis, and, except as is permitted by this Agreement, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any person whose employment involves any of respondent's businesses, including without limitation businesses in the Nashville metropolitan area. Such personnel shall also execute a confidentiality agreement prohibiting the disclosure of any material confidential information of the NRH Assets.

n. HEALTHSOUTH shall cause the NRH Assets to continue to expend funds for marketing and advertising at a level not lower than that expended in fiscal year 1994 or budgeted in fiscal year 1995, and shall increase such spending as deemed reasonably necessary by the Management Committee in light of competitive conditions.

4. Should the Federal Trade Commission seek in any proceeding to compel respondent to divest any of the NRH Assets as provided in the Consent Order, or to seek any other injunctive or equitable relief for any failure to comply with the Consent Order or this Agreement, or in any way relating to the Acquisition, respondent shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Acquisition. Respondent also waives all rights to contest the validity of this Agreement.

5. To the extent that this Agreement requires respondent to take, or prohibits respondent from taking, certain actions that otherwise may be required or prohibited by contract, respondent shall abide by the terms of this Agreement or the Consent Order and shall not assert as a defense such contract requirements in a civil penalty action brought by the Commission to enforce the terms of this Agreement or Consent Order.

6. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to respondent made to its principal office, respondent shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of respondent and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession, or under the control of respondent, relating to compliance with this Agreement;

b. Upon five (5) days' notice to respondent, and without restraint or interference from respondent, to interview officers or employees of respondent, who may have counsel present, regarding any such matters.

7. This Agreement shall not be binding until approved by the Commission.

Analysis of Proposed Consent Order to Aid Public Comment HEALTHSOUTH Rehabilitation Corp., File No. 951–0007

The Federal Trade Commission has accepted, subject to final approval, a proposed consent order from HEALTHSOUTH Rehabilitation Corporation (''HEALTHSOUTH''). The agreement would settle charges by the Federal Trade Commission that HEALTHSOUTH's proposed merger with ReLife Inc. (''ReLife'') would violate Section 5 of the Federal Trade Commission Act, and Section 7 of the Clayton Act.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or issue and serve the agreement's proposed order.

HEALTHSOUTH owns and operates rehabilitation hospital service facilities nationwide, including facilities in the Birmingham, Alabama, Charleston, South Carolina, and Nashville, Tennessee metropolitan areas. ReLife operates rehabilitation hospital facilities in these same areas, among others. The complaint accompanying the proposed consent order discusses the proposed acquisition's impact upon competition for rehabilitation hospital services in the Birmingham, Charleston, and Nashville areas. According to the complaint, HEALTHSOUTH operates (*i.e.*, owns, leases, or manages):

—a rehabilitation unit within Medical Center East, a general acute care hospital in Birmingham, Alabama;
—Trident Neurosciences Center, a rehabilitation hospital in Charleston, South Carolina; and
—Vanderbilt Stallworth Rehabilitation Hospital, a rehabilitation hospital in Nashville, Tennessee.

ReLife operates:

—Lakeshore Hospital, a rehabilitation hospital in Birmingham, Alabama, as well as rehabilitation hospital units within Bessemer Carraway Medical Center, Brookwood Medical Center, and Carraway Methodist Medical Center, all general acute care hospitals in Birmingham, Alabama or adjacent communities in Jefferson County, Alabama;
—a rehabilitation hospital unit within Roper Hospital, a general acute care hospital in Charleston, South Carolina; and
—Nashville Rehabilitation Hospital in Nashville, Tennessee, a general acute care hospital in Nashville, Tennessee which contains a rehabilitation hospital unit, as well as rehabilitation unit within Sumner Memorial Hospital, a general acute care hospital in Gallatin, Tennessee northeast of Nashville.

The consent order, if issued in final form by the Commission, would settle charges that the acquisition may substantially lessen competition for rehabilitation hospital services in the Birmingham, Charleston, and Nashville areas. The complaint alleges that HEALTHSOUTH and ReLife are competitors in those market areas, where, according to the complaint, concentration is already high, and entry by new competitors would be difficult. The complaint alleges that the Commission has reason to believe that the acquisition would have anticompetitive effects in the Birmingham, Charleston, and Nashville rehabilitation hospital services markets, in violation of Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act, unless an effective remedy eliminates such anticompetitive effects.

The order accepted for public comment contains provisions requiring the divestiture by HEALTHSOUTH of Nashville Rehabilitation hospital and related assets in Nashville, Tennessee. The order also requires the termination by HEALTHSOUTH of management contracts pertaining to the rehabilitation hospital facilities at Roper Hospital in

Charleston, South Carolina, and Medical Center East in Birmingham, Alabama. The purpose of the divestiture and contract terminations is to ensure the continuation of these designated facilities as ongoing, viable rehabilitation facilities independent or HEALTHSOUTH, and to remedy the lessening of competition resulting from the acquisition in the Birmingham, Charleston, and Nashville areas.

The proposed order requires HEALTHSOUTH to divest Nashville Rehabilitation Hospital to an acquirer, and in a manner, approved by the Commission. Under the terms of the order, the required divestiture mut be completed within twelve months of the date the order becomes final. If the required divestiture is not completed within the twelve-month period, HEALTHSOUTH will consent to the appointment of a trustee, who would have twelve additional months to effect the divestiture. The acquirer of Nashville Rehabilitation Hospital would be required to agree that, for ten years from the date of the order, it will not transfer Nashville Rehabilitation Hospital, without the prior approval of the Commission, to any person already operating a rehabilitation hospital facility in the Nashville area. In addition, the hold separate agreement executed in conjunction with the consent agreement requires HEALTHSOUTH, until the completion of the divestiture or as otherwise specified, to maintain Nashville Rehabilitation separate from HEALTHSOUTH's other operations.

The provisions of the order relating to Roper Hospital and Medical Center East require HEALTHSOUTH to terminate the management contracts for the operation of those hospitals' rehabilitation units, and cease operation of those rehabilitation facilities, within 90 days after the order becomes final (for Medical Center east) or by October 1, 1995 (for Roper Hospital). HEALTHSOUTH may, however, continue to supply therapy personnel to the Medical Center East rehabilitation unit. In addition, HEALTHSOUTH would be required to enter into agreements with Roper Hospital and Medical Center East to protect any competitively-sensitive information about those hospitals which HEALTHSOUTH has obtained, so that HEALTHSOUTH rehabilitation facilities which compete with those hospitals will not be able to use that information to their competitive advantage.

The order would prohibit HEALTHSOUTH from acquiring any rehabilitation hospital facilities in the Birmingham, Charleston, and Nashville areas without the prior approval of the Federal Trade Commission. It would also prohibit HEALTHSOUTH from transferring, without prior Commission approval, any rehabilitation hospital facility it operates in any of those areas to another person operating (or in the process of acquiring) another rehabilitation hospital facility in that area. These provisions, in combination, would give the Commission authority to prohibit any substantial combination of the rehabilitation hospital operations of HEALTHSOUTH with those of any other rehabilitation hospital facility in the Birmingham, Charleston, and Nashville areas, unless HEALTHSOUTH convinced the Commission that a particular transaction would not endanger competition in those areas. The provisions would not apply to transaction where the value of the transferred assets does not exceed $500,000, or to certain transactions between HEALTHSOUTH and the rehabilitation hospital facilities it already operates. They would expire ten years after the order becomes final.

The order would also require HEALTHSOUTH to provide advance notice to the commission before carrying out certain joint ventures with competing rehabilitation hospital facilities in the Birmingham, Charleston, and Nashville areas, for which the order does not otherwise require prior approval. This requirement is subject to limitation similar to those applicable to the prior approval provision, does not require notice of certain specified support services joint ventures, and also does not require additional notice for transactions which HEALTHSOUTH provides notice under the premerger notification requirements of the Clayton Act.

For ten years, the order would prohibit HEALTHSOUTH from transferring any of its rehabilitation hospital facilities in the Birmingham, Charleston, or Nashville areas to another person without first filing with the Commission an agreement by the transferee to be bound by the order provisions that apply to the facility and the market area in which it is located.

The purpose of this analysis is to invite public comment concerning the proposed order, to assist the Commission in its determination whether to make the order final. This analysis is not intended to constitute an official interpretation of the agreement and order or to modify their terms in any way.

The agreement is for settlement purposes only and does not constitute an admission by HEALTHSOUTH that its proposed acquisition would have violated the law, as alleged in the Commission's complaint.

Donald S. Clark,

Secretary.

[FR Doc. 95–2059 Filed 1–26–95; 8:45 am]

BILLING CODE 6750–01–M

[File No. 951 0005]

Lockheed Corporation, et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would allow, among other things, the completion of the merger between Lockheed Corporation and Martin Marietta Corporation, to form Lockheed Martin Corporation, but would prohibit the respondents from enforcing exclusivity provisions contained in teaming arrangements that each individual firm now has with infrared sensor producers. The consent agreement also would prohibit certain divisions of the merged firm from gaining access through other divisions to nonpublic information that the respondents' electronics division receives from competing military aircraft manufacturers when providing a navigation and targeting system known as ''LANTIRN'' to competing aircraft producers; or that the respondents' satellite divisions receive from competing expendable launch vehicle suppliers when those competing suppliers launch the respondents' satellites.

DATES: Comments must be received on or before March 28, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Mary Lou Steptoe, Ann Malester, or Laura Wilkinson, FTC/H–374 or S–2224, Washington, DC 20580 (202) 326–2584, 326–2820 or 326–2830.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period

of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii).

In the Matter of LOCKHEED CORPORATION, a corporation, MARTIN MARIETTA CORPORATION, a corporation, and LOCKHEED MARTIN CORPORATION, a corporation, File No. 951–0005.

Agreement Containing Consent Order

The Federal Trade Commission (''the Commission''), having initiated an investigation of the merger of Lockheed Corporation (''Lockheed'') and Martin Marietta Corporation (''Martin Marietta''), and it now appearing that Lockheed, Martin Marietta and Lockheed Martin Corporation (''Lockheed Martin''), hereinafter sometimes referred to as proposed respondents, are willing to enter into an agreement containing an order to refrain from certain acts and to provide for other relief:

It is hereby agreed by and between proposed respondents, by their duly authorized officers and attorneys, and counsel for the Commission that:

1. Proposed respondent Lockheed is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 4500 Park Granada Boulevard, Calabasas, California 91399.

2. Proposed respondent Martin Marietta is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 6801 Rockledge Drive, Bethesda, Maryland 20817.

3. Proposed respondent Lockheed Martin is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 6801 Rockledge Drive, Bethesda, Maryland 20817.

4. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint.

5. Proposed respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the other entered pursuant to this agreement; and

d. Any claim under the Equal Access to Justice Act.

6. Proposed respondents shall submit within thirty (30) days of the date this agreement is signed by proposed respondents an initial report, pursuant to Section 2.33 of the Commission's Rules, signed by the proposed respondents setting forth in detail the manner in which the proposed respondents will comply with Paragraphs II, III, IV, V, VI, VII and VIII of the order when and if entered. Such report will not become part of the public record unless and until the accompanying agreement and order are accepted by the Commission.

7. This agreement shall not become a part of the public record of proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

8. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft complaint, other than jurisdictional facts, are true.

9. This agreement contemplates that, if it is accepted by the Commission, if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to refrain from certain acts in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The compliant may be used in construing the terms of the order, and no agreement, understanding, representation or interpretation not contained in the order of the agreement may be used to vary or contradict the terms of the order.

10. Proposed respondents have read the draft of complaint and order contemplated hereby. Proposed respondents understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that, as used in this order, the following definitions shall apply:

A. ''Lockheed'' means Lockheed Corporation and its predecessors, successors, subsidiaries, divisions, groups and affiliates controlled by Lockheed, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

B. ''Missile Systems'' means the Missile Systems Division of Lockheed Missiles & Space Company, Inc., an entity with its principal place of business at 1111 Lockheed Way, Sunnyvale, California 94088, which is engaged in, among other things, the research, development, manufacture and sale of Expendable Launch Vehicles, and its subsidiaries, divisions, groups and affiliates controlled by Missiles Systems, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

C. ''Commercial Space'' means Lockheed Commercial Space Company, Inc., an entity with its principal place of business at 1111 Lockheed Way, Sunnyvale, California 94088, and Lockheed-Khrunichev-Energia International (''LKEI''), a joint venture between Lockheed Commercial Space Company, Inc., Khrunichev Enterprise and Energia Scientific-Productive Entity with its principal place of business at 2099 Gateway Place, Suite 220, San Jose, California 95110, which are engaged in, among other things, the research, development, manufacture, marketing and sale of Expendable Launch Vehicles, and its subsidiaries,

divisions, joint venture partners, groups and affiliates controlled by Commercial Space, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

D. ''Space Systems'' means the Space Systems Division of Lockheed Missiles & Space Company, Inc., an entity with its principal place of business at 1111 Lockheed Way, Sunnyvale, California 94088, which is engaged in, among other things, the research, development, manufacture and sale of Satellites, and its subsidiaries, divisions, groups and affiliates controlled by Space Systems, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

E. ''Aeronautical Systems'' means Lockheed Aeronautical Systems Group, an entity with its principal place of business at 2859 Paces Ferry, Suite 1800, Atlanta, Georgia 30339, which is engaged in, among other things, the research, development, manufacture and sale of Military Aircraft, and its subsidiaries, divisions, groups and affiliates controlled by Aeronautical Systems, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

F. ''Martin Marietta'' means Martin Marietta Corporation and its predecessors, successors, subsidiaries, divisions, groups and affiliates controlled by Martin Marietta, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

G. ''Astronautics'' means Martin Marietta's Astronautics Company, an entity with its principal place of business at P.O. Box 179, Denver, Colorado 80201, which is engaged in, among other things, the research, development, manufacture and sale of Satellites and Expendable Launch Vehicles, and its subsidiaries, divisions, groups and affiliates controlled by Astronautics, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

H. ''Astro Space'' means Martin Marietta's Astro Space Company, an entity with its principal place of business at P.O. Box 800, Princeton, New Jersey 08543, which is engaged in, among other things, the research, development, manufacture and sale of Satellites, and its subsidiaries, divisions, groups and affiliates controlled by Astro Space, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

I. ''Electronics and Missiles'' means Martin Marietta's Electronics and Missiles Company, an entity with its principal place of business at 5600 Sand Lake Road, Orlando, Florida 32819, which is engaged in, among other things, the manufacture and sale of LANTIRN Systems, and its subsidiaries, divisions, groups and affiliates controlled by Electronics and Missiles, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

J. ''Lockheed Martin'' means Lockheed Martin Corporation and its predecessors, successors, subsidiaries, divisions, groups and affiliates controlled by Lockheed Martin, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

K. ''Respondents'' means Lockheed, Martin Marietta and Lockheed Martin.

L. ''Hughes'' means GM Hughes Electronics Corporation, a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 7200 Hughes Terrace, Los Angeles, California 90045.

M. ''Grumman'' means Northrop Grumman Corporation, a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1840 Century Park East, Los Angeles, California 90067.

N. ''Person'' means any natural person, corporate entity, partnership, association, joint venture, government entity, trust or other business or legal entity.

O. ''Commission'' means the Federal Trade Commission.

P. ''Lockheed/Hughes Teaming Agreement'' means the teaming agreement entered into on January 15, 1985, between Lockheed and the Electro-Optical and Data Systems Group of the Hughes Aircraft Company for the purpose of submitting a proposal to the United States Department of Defense for the Demonstration/Validation phase of the Follow-On Early Warning System, and all subsequent amendments or other modifications thereto.

Q. ''Martin Marietta/Grumman Teaming Agreement'' means the teaming agreement entered into on June 20, 1994, between Martin Marietta and Grumman for the purpose of bidding on or otherwise competing for the United States Department of Defense's Alert, Locate and Report Missiles program, and all subsequent amendments or other modifications thereto.

R. ''Space Based Early Warning System'' means any Satellite system designed to be used for tactical warning and attack assessment, theater and strategic missile defense, and related military purposes by the United States Department of Defense, including but not limited to the Space Based InfraRed (''SBIR'') system and successor systems considered by the United States Department of Defense to follow SBIR programmatically.

S. ''Military Aircraft'' means aircraft manufactured for sale to the United States Department of Defense, whether for use by the United States Department of Defense or for transfer to a foreign military sale purchaser.

T. ''LANTIRN Systems'' means dual pod, externally mounted, Low-Altitude Navigation and Targeting Infrared for Night Systems manufactured by Martin Marietta for use on Military Aircraft.

U. ''Expendable Launch Vehicle'' means a vehicle that launches a Satellite(s) from the Earth's surface that is consumed during the process of launching a Satellite(s) and therefore cannot be launched more than one time.

V. ''Satellite'' means an unmanned machine that is launched from the Earth's surface for the purpose of transmitting data back to Earth and which is designed either to orbit the Earth or travel away from the Earth.

W. ''Non-Public LANTIRN Information'' means any information not in the public domain furnished by any Military Aircraft manufacturer to Electronics and Missiles in its capacity as the provider of LANTIRN Systems, and (1) if written information, designated in writing by the Military Aircraft manufacturer as proprietary information by an appropriate legend, marking, stamp, or positive written identification on the face thereof, or (2) if oral, visual or other information, identified as proprietary information in writing by the Military Aircraft manufacturer prior to the disclosure or within thirty (30) days after such disclosure. Non-Public LANTIRN Information shall not include: (i) information already known to Respondents, (ii) information which subsequently falls within the public domain through no violation of this order by Respondents, (iii) information which subsequently becomes known to Respondents from a third party not in breach of a confidential disclosure agreement, or (iv) information after six (6) years from the date of disclosure of such Non-Public LANTIRN Information to Respondents, or such other period as

agreed to in writing by Respondents and the provider of the information.

X. ''Non-Public ELV Information'' means any information not in the public domain furnished by an Expendable Launch Vehicle manufacturer to Space Systems, Astro Space or Astronautics in their capacities as providers of Satellites, and (1) if written information, designated in writing by the Expendable Launch Vehicle manufacturer as proprietary information by an appropriate legend, marking, stamp, or positive written identification on the face thereof, or (2) if oral, visual or other information, identified as proprietary information in writing by the Expendable Launch Vehicle manufacturer prior to the disclosure or within thirty (30) days after such disclosure. Non-Public ELV Information shall not include: (i) information already known to Respondents, (ii) information which subsequently falls within the public domain through no violation of this order by Respondents, (iii) information which subsequently becomes known to Respondents from a third party not in breach of a confidential disclosure agreement, or (iv) information after six (6) years from the date of disclosure of such Non-Public ELV Information to Respondents, or such other period as agreed to in writing by Respondents and the provider of the information.

Y. ''Merger'' means the merger of Martin Marietta and Lockheed.

II

It is further ordered that Respondents shall not enforce or attempt to enforce any provision contained in the Lockheed/Hughes Teaming Agreement that prohibits in any way Hughes from (1) Competing against Lockheed for any part of any Space Based Early Warning System, or (2) teaming or otherwise contracting with any other person for the purpose of bidding on, developing, manufacturing, or supplying any part of any Space Based Early Warning System. Respondents shall not enforce or attempt to enforce any proprietary rights in the electro-optical sensors developed by Hughes in connection with or by virtue of the Lockheed/Hughes Teaming Agreement in a manner that would inhibit Hughes from competing with Respondents for any part of any Space Based Early Warning System.

III

It is further ordered that Respondents shall not enforce or attempt to enforce any provision contained in the Martin Marietta/Grumman Teaming Agreement that prohibits in any way Grumman from (1) Competing against Martin Marietta for any part of any Space Based Early Warning System, or (2) teaming or otherwise contracting with any other person for the purpose of bidding on, developing, manufacturing, or supplying any part of any Space Based Early Warning System. Respondents shall not enforce or attempt to enforce any proprietary rights in the electro-optical sensors developed by Grumman in connection with or by virtue of the Martin Marietta/Grumman Teaming Agreement in a manner that would inhibit Grumman from competing with Respondents for any part of any Space Based Early Warning System.

IV

It is further ordered that:

A. Respondents shall not, absent the prior written consent of the proprietor of Non-Public LANTIRN Information, provide, disclose, or otherwise make available to Aeronautical Systems any Non-Public LANTIRN Information; and

B. Respondents shall use any Non-Public LANTIRN Information obtained by Electronics and Missiles only in Electronics and Missiles' capacity as the provider of LANTIRN Systems, absent the prior written consent of the proprietor of Non-Public LANTIRN Information.

V

It is further ordered that Respondents shall deliver a copy of this order to any United States Military Aircraft manufacturer prior to obtaining any Non-Public LANTIRN Information relating to the manufacturer's Military Aircraft either from the Military Aircraft's manufacturer or through the Merger; *provided* that for Non-Public LANTIRN Information described in Paragraph I.W.(2) of this order, Respondents shall deliver a copy of this order within ten (10) days of the written identification by the Military Aircraft manufacturer.

VI

It is further ordered that Respondents shall not make any modifications, upgrades, or other changes to LANTIRN Systems or any component or subcomponent thereof that discriminate against any other Military Aircraft manufacturer with regard to the performance of the Military Aircraft or the time or cost required to integrate LANTIRN Systems into the Military Aircraft. *Provided, however,* that nothing in this paragraph shall prohibit Respondents from making any such modifications, upgrades, or other changes that are: (1) necessary to meet competition from (a) foreign military aircraft, or (b) other products designed to provide targeting, terrain following, or night navigation functions comparable in performance to LANTIRN Systems; or (2) approved in writing by the Secretary of Defense or his or her designee.

VII

It is further ordered that:

A. Respondents shall not, absent the prior written consent of the proprietor of Non-Public ELV Information, provide, disclose, or otherwise make available to Astronautics, Missile Systems or Commercial Space any Non-Public ELV Information obtained by Astro Space or Space Systems; and

B. Respondents shall use any Non-Public ELV Information obtained by Astronautics, Astro Space or Space Systems only in Astronautics', Astro Space's and Space System's capacities as providers of Satellites, absent the prior written consent of the proprietor of Non-Public ELV Information.

VIII

It is further ordered that Respondents shall deliver a copy of this order to any United States Expendable Launch Vehicle manufacturer prior to obtaining any Non-Public ELV Information relating to the manufacturer's Expendable Launch Vehicle(s) either from the Expendable Launch Vehicle manufacturer or through the Merger; *provided* that for Non-Public ELV Information described in Paragraph I.X.(2) of this order, Respondents shall deliver a copy of this order within ten (10) days of the written identification by the Expendable Launch Vehicle manufacturer.

IX

It is further ordered that Respondents shall comply with all terms of the Interim Agreement, attached to this order and made a part hereof as Appendix I. Said Interim Agreement shall continue in effect until the provisions in Paragraphs II, III, IV, V, VI, VII and VIII are complied with or until such other time as is stated in said Interim Agreement.

X

It is further ordered that within sixty (60) days of the date this order becomes final and annually for the next ten (10) years on the anniversary of the date this order becomes final, and at such other times as the Commission may require, Respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which they have complied and are complying with this order. To the extent not prohibited by United States

Government national security requirements, Respondents shall include in their reports information sufficient to identify (a) all modifications, upgrades, or other changes to LANTIRN Systems for which Respondents have requested and/or received written approval from the Secretary of Defense or his or her designee pursuant to Paragraph VI of this order, (b) all United States Military Aircraft manufacturers with whom Respondents have entered into an agreement for the research, development, manufacture or sale of LANTIRN Systems, and (c) all United States Expendable Launch Vehicle manufacturers with whom Respondents have entered into an agreement for the research, development, manufacture or sale of Satellites.

XI

It is further ordered that Respondents shall notify the Commission at least thirty days prior to any proposed change in Respondents, such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in Respondent that may affect compliance obligations arising out of this order.

XII

It is further ordered that, for the purpose of determining or securing compliance with this order, and subject to any legally recognized privilege and applicable United States Government national security requirements, upon written request, and on reasonable notice, any Respondent shall permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of that Respondent relating to any matters contained in this order; and

B. Upon five (5) days' notice to any Respondent and without restraint or interference from it, to interview officers, directors, or employees of that Respondent, who may have counsel present, regarding such matters.

XIII

It is further ordered that this order shall terminate twenty (20) years from the date this order becomes final.

Appendix I

In the Matter of LOCKHEED CORPORATION, a corporation, MARTIN MARIETTA CORPORATION, a corporation, and LOCKHEED MARTIN CORPORATION, a corporation, File No. 951–0005.

Interim Agreement

This Interim Agreement is by and between Lockheed Corporation (''Lockheed''), a corporation organized and existing under the laws of the State of Delaware, Martin Marietta Corporation (''Martin Marietta''), a corporation organized and existing under the laws of the State of Maryland, Lockheed Martin Corporation (''Lockheed Martin''), a corporation organized and existing under the laws of the State of Maryland (collectively referred to as ''Proposed Respondents''), and the Federal Trade Commission (the ''Commission''), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.* (collectively, the ''Parties'').

Premises

Whereas, Martin Marietta and Lockheed have proposed the merger of their businesses by the formation of a new corporation, Lockheed Martin; and

Whereas, the Commission is now investigating the proposed Merger to determine if it would violate any of the statutes the Commission enforces; and

Whereas, if the Commission accepts the Agreement Containing Consent Order (''Consent Agreement''), the Commission will place it on the public record for a period of at least sixty (60) days and subsequently may either withdraw such acceptance or issue and serve its Complaint and decision in disposition of the proceeding pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving competition during the period prior to the final acceptance of the Consent Agreement by the Commission (after the 60-day public notice period), there may be interim competitive harm and divestiture or other relief resulting from a proceeding challenging the legality of the proposed Merger might not be possible, or might be less than an effective remedy; and

Whereas, Proposed Respondents entering into this Interim Agreement shall in no way be construed as an admission by Proposed Respondents that the proposed Merger constitutes a violation of any statute; and

Whereas, Proposed Respondents understand that no act or transaction contemplated by this Interim Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission by reason of anything contained in this Interim Agreement.

Now, therefore, the Parties agree, upon the understanding that the Commission has not yet determined whether the proposed Merger will be challenged, and in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Agreement, it will not seek further relief from Proposed Respondents with respect to the proposed Merger, except that the Commission may exercise any and all rights to enforce this Interim Agreement, the Consent Agreement, and the final order in this matter, and, in the event that Proposed Respondents do not comply with the terms of this Interim Agreement, to seek further relief pursuant to Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and Section 7 of the Clayton Act, 15 U.S.C. § 18, as follows:

1. Proposed Respondents agree to execute and be bound by the terms of the Other contained in the Consent Agreement, as if it were final, from the date the Consent Agreement is accepted for public comment by the Commission.

2. Proposed Respondents agree to deliver within three (3) days of the date the Consent Agreement is accepted for public comment by the Commission, a copy if the Consent Agreement and a copy of this Interim Agreement to the United States Department of Defense, GM Hughes Electronics Corporation, Loral Corporation, Northorp Grumman Corporation, Rockwell International Corporation and TRW Incorporated.

3. Proposed Respondents agree to submit within thirty (30) days of the date the Consent Agreement is signed by the Proposed Respondents, an initial report, pursuant to Section 2.33 of the Commission's Rules, signed by the Proposed Respondents setting forth in detail the manner in which the Proposed Respondents will comply with Paragraphs II, III, IV, V, VI, VII and VIII of the Consent Agreement.

4, Proposed Respondents agree that, from the date the Consent Agreement is accepted for public comment by the Commission until the first of the dates listed in subparagraphs 4.a and 4.b, they will comply with the provisions of this Interim Agreement:

a. Ten business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Section 2.34 of the Commission's rules;

b. The date the Commission finally accepts the Consent Agreement and issues its Decision and Order.

5. Proposed Respondents waive all rights to contest the validity of this Interim Agreement.

6. For the purpose of determining or securing compliance with this Interim Agreement, subject to any legally recognized privilege and applicable United States Government national security requirements, and upon written request, and on reasonable notice, to any Proposed Respondent made to its principal office, that Proposed Respondent shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of that Proposed Respondent and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of that Proposed Respondent relating to compliance with this Interim Agreement; and

b. Upon five (5) days' notice to any Proposed Respondent and without restraint or interference from it, to interview officers, directors, or employees of that Proposed Respondent, who may have counsel present, regarding any such matters.

7. This Interim Agreement shall not be binding until accepted by the Commission.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an agreement containing a proposed Consent Order from Lockheed Corporation (''Lockheed''), Martin Marietta Corporation (''Martin Marietta'') and Lockheed Martin Corporation (''Lockheed Martin''), collectively referred to as respondents. The proposed Consent Order prohibits respondents from enforcing exclusivity provisions contained in teaming agreements with manufacturers of sensors for space-based early warning systems. The proposed Consent Order also prohibits respondents' military aircraft division from gaining access to any non-public information that respondents' electronics division receives from competing military aircraft manufacturers when providing a navigation and targeting system known as ''LANTIRN'' to competing aircraft producers. In addition, the proposed Consent Order prohibits respondents from making any modifications to the LANTIRN system that discriminate against other military aircraft manufacturers unless such modifications either are necessary to meet competition or are approved by the Secretary of Defense. Finally, the proposed Consent Order prohibits respondents' expendable launch vehicle (''ELV'') divisions from gaining access to any non-public information that respondents' satellite divisions receive from competing ELV suppliers when those competing suppliers launch respondents' satellites.

The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed Order.

Pursuant to an August 29, 1994, Agreement and Plan of Reorganization, Lockheed and Martin Marietta agreed to merge their businesses into a newly created corporation, Lockheed Martin. The proposed complaint alleges that the merger, if consummated, would violate Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, in the following three markets in the United States:

(1) the research, development, manufacture and sale of satellites for use in space-based early warning systems;

(2) the research, development, manufacture and sale of military aircraft; and

(3) the research, development, manufacture and sale of expendable launch vehicles.

The proposed Consent Order would remedy the alleged violations. First, in the market for space-based early warning systems, Lockheed and Martin Marietta are exclusively teamed with the Electro-Optical and Data Systems Group of Hughes Aircraft Company (''Hughes'') and Northrop Grumman Corporation (''Northrop Grumman''), respectively. Hughes and Northrop Grumman are two of the leading manufacturers of sensors for space-based early warning systems. Because the Lockheed/Hughes and Martin Marietta/Northrop Grumman teaming agreements are both exclusive, the proposed merger would allow Lockheed Martin to tie up two different sensors for space-based early warning systems. The proposed Consent Order makes these agreements non-exclusive, which allows Hughes and Northrop Grumman to bid for space-based early warning systems either on their own or teamed with other companies, as well as to continue working with their current teammates, Lockheed and Martin Marietta. The purpose of the proposed Consent Order is to increase the number of competitors for space-based early warning systems procured by the United States Department of Defense (''DoD'').

Second, Lockheed is a significant competitor in the manufacture and sale of military aircraft, and Martin Marietta is the only supplier of the LANTIRN infrared navigation and targeting system, a critical component on some military aircraft. Following the merger, Lockheed Martin would be the sole source for LANTIRN systems, as well as a competitor in the military aircraft market. Because military aircraft manufacturers will have to provide proprietary information to the Lockheed Martin division that manufacturers LANTIRN, Lockheed Martin's military aircraft division could gain access to competitively significant and non-public information concerning competing military aircraft. In addition, because the LANTIRN system is periodically modified or upgraded, Lockheed Martin could modify the LANTIRN in a manner that discriminates against competing military aircraft manufacturers. As a result, the proposed merger increases the likelihood that competition between military aircraft suppliers would decrease because Lockheed Martin would have access to its competitors' proprietary information, which could affect the prices and services that Lockheed Martin provides. In addition, advancements in military aircraft research, innovation, and quality would be reduced because Lockheed Martin's military aircraft competitors would fear that Lockheed Martin could ''free ride'' off of its competitors' technological developments.

Therefore, the proposed Consent Order prohibits Lockheed Martin from disclosing any non-public information that it received from military aircraft manufacturers in its capacity as a provider of the LANTIRN system to Lockheed Martin's military aircraft division. Under the proposed Order, Lockheed Martin may only use such information in its capacity as a provider of the LANTIRN system. Non-public information in this context means any information not in the public domain and designated as proprietary information by any military aircraft manufacturer that provides such information to Lockheed Martin. The proposed Consent Order also prohibits Lockheed Martin from making any modifications to the LANTIRN system that disadvantage other military aircraft manufacturers unless the modification are necessary to meet competition or are approved by the Secretary of Defense, or

his or her designee. The purpose of the proposed Order is to maintain the opportunity for full competition in the market for the research, development, manufacture and sale of military aircraft.

Third, Martin Marietta and Lockheed are significant competitors in the manufacture and sale of satellites and expendable launch vehicles. The proposed merger increases the degree of vertical integration in the markets for satellites and ELVs used by the United States government. Because satellites manufactured by Lockheed Martin may be launched on ELVs supplied by Lockheed Martin's competitors, Lockheed Martin's satellite divisions could gain access to competitively significant and non-public information concerning competitors' ELVs during the process of integrating a satellite and an ELV. As a result, the proposed merger increases the likelihood that competition between ELV suppliers would decrease because Lockheed Martin would have access to its competitor's proprietary information, which could affect the prices and services that Lockheed Martin provides. In addition, advancements in ELV research, innovation, and quality would be reduced because Lockheed Martin's ELV competitors would fear that Lockheed Martin could ''free ride'' off of its competitors' technological developments.

The proposed Consent Order prohibits Lockheed Martin's satellite divisions from disclosing to Lockheed Martin's ELV divisions any non-public information that Lockheed Martin receives from competing suppliers of ELVs. Under the proposed Order, Lockheed Martin may only use such information in its capacity as a satellite manufacturer. Non-public information in this context means any information not in the public domain and designated as proprietary information by any ELV manufacturer that provides such information to Lockheed Martin's satellite divisions. The purpose of the proposed Order is to maintain the opportunity for full competition in the research, development, manufacture and sale of ELVs.

Under the provisions of the proposed Consent Order, respondents are required to deliver a copy of the Order to any United States military aircraft manufacturer and to any United States ELV manufacturer prior to obtaining any information from them that is outside the public domain. Under the proposed Order, respondents also are required to provide to the Commission reports of their compliance with the Order sixty (60) days after the Order becomes final and annually for the next ten (10) years on the anniversary of the date the Order becomes final.

In order to preserve or promote competition in the relevant markets during the period prior to the final acceptance of the proposed Consent Order (after the 60-day public notice period), respondents have entered into an Interim Agreement with the Commission in which respondents agreed to be bound by the proposed Consent Order as of January 10, 1995, the date the Commission accepted the proposed Consent Order subject to final approval.

The purpose of this analysis is to facilitate public comment on the proposed Order, and it is not intended to constitute an official interpretation of the agreement and proposed Order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 95–2060 Filed 1–26–95; 8:45 am]

BILLING CODE 6750–01–M

[File No. 941–0043]

Montedison S.p.A., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the Royal Dutch Petroleum Company and the Shell Group of Companies to divest all of Shell Oil's polypropylene assets to Union Carbide Corporation, or to another Commission approved acquirer, within six months; would require Montedison to relinquish revenues under the profit sharing agreement from future U.S. licenses by Mitsui Petrochemical Industries Ltd.; and would prohibit the company from entering into similar agreements.

DATES: Comments must be received on or before March 28, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Howard Morse or Rhett Krulla, FTC/S–3627, Washington, D.C. 20580. (202) 326–6320 or 326–2608.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii).

In the matter of Montedison S.p.A., a corporation, HIMONT Incorporated, a corporation, Royal Dutch Petroleum Company, a corporation, The ''Shell'' Transport and Trading Company, p.l.c., a corporation, and Shell Oil Company, a corporation, File No. 941–0043.

Agreement Containing Consent Order

The Federal Trade Commission (''the Commission''), having initiated an investigation of the proposed formation of a joint venture between Montedison S.p.A. and HIMONT Incorporated (collectively ''Montedison'') and Shell Petroleum N.V., a holding company of the Royal Dutch/Shell Group of Companies (''the Shell Group'') controlled by N.V. Koninklijke Nederlandsche Petroleum Maatschappij (Royal Dutch Petroleum Company) (''Royal Dutch'') and The ''Shell'' Transport and Trading Company, p.l.c. (''Shell T&T''), that would merge certain assets and businesses of Montedison and of companies of the Shell Group and it now appearing that Royal Dutch, Shell T&T, and Shell Oil Company (''Shell Oil''), a company of the Shell Group, (collectively ''Shell'') and Montedison, all collectively hereinafter sometimes referred to as ''proposed respondents,'' are willing to enter into an agreement containing an order to exclude certain assets and businesses from the joint venture, to divest certain assets and businesses, and to cease and desist from making certain acquisitions, and providing for other relief:

It is hereby agreed by and between proposed respondents, by their duly authorized officers and attorneys, and counsel for the Commission that:

1. Proposed respondent Montedison S.p.A. is a corporation organized, existing and doing business under and by virtue of the laws of Italy with its principal executive offices located at Foro Buonaparte, 31, 20121 Milan, Italy.

2. Proposed respondent HIMONT Incorporated is a corporation organized, existing and doing business under and by virtue of the laws of the State of

Delaware with its principal executive offices located at Three Little Falls Centre, 2801 Centerville Road, Wilmington, Delaware 19850–5439. HIMONT Incorporated is a wholly-owned, indirect subsidiary of Montedison S.p.A.

3. Proposed respondent Royal Dutch is a corporation organized, existing and doing business under and by virtue of the laws of the Netherlands with its principal executive offices located at Carel van Bylandtlaan 30, The Hague, The Netherlands. Royal Dutch is a holding company which, together with Shell T&T, controls the Shell Group.

4. Proposed respondent Shell T&T is a corporation organized, existing and doing business under and by virtue of the laws of England with its principal executive offices located at Shell Centre, London SE1 7NA, England. Shell T&T is a holding company which, together with Royal Dutch, controls the Shell Group.

5. Proposed respondent Shell Oil is a corporation organized, existing and doing business under and by virtue of the laws of Delaware with its principal executive offices located at One Shell Plaza, Houston, Texas 77002. Shell Oil is a member company of the Shell Group, and all of its shares are directly or indirectly owned by Royal Dutch and Shell T&T.

6. Proposed respondents admit, for purposes of this Agreement and Order and any related enforcement action, all the jurisdictional facts set forth in the draft of complaint.

7. Proposed respondents waive:

(a) any further procedural steps;

(b) the requirement that the Commission's decision contains a statement of findings of fact and conclusions of law;

(c) all rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this Agreement; and

(d) any claim under the Equal Access to Justice Act.

8. This Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto released. The Commission thereafter may either withdraw its acceptance of this Agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such forms as the circumstances may require) and decision, in disposition of the proceeding.

9. This Agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint, or that the facts as alleged in the draft of complaint, other than jurisdictional facts admitted as specified above, are true.

10. This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following Order to divest and to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to proposed respondents' attorneys of record, William C. Pelster, Esq., Skadden, Arps, Slate, Meagher & Flom, 919 Third Avenue, New York, NY 10022, for Montedison; Robert D. Joffe, Esq., Cravath, Swaine & Moore, 825 Eighth Avenue, New York, NY 10019, for Royal Dutch and Shell T&T; and S. Allen Lackey, Esq., Shell Oil Company, One Shell Plaza, Houston, Texas 77252, for Shell Oil, shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation or interpretation not contained in the Order or this Agreement may be used to vary or contradict the terms of the Order.

11. Proposed respondents have read the proposed complaint and Order contemplated hereby. Proposed respondents understand that once the Order has been issued, they will be required to file one or more compliance reports showing they have fully complied with the Order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

It is ordered that, as used in this Order, the following definitions shall apply:

A. The following terms shall mean the following entities:

1. ''Montedison'' means Montedison S.p.A. and its wholly owned subsidiary Montedison (Nederland) N.V., a holding company that owns Montecatini Nederland B.V., which in turn owns, directly or indirectly, through its subsidiaries HIMONT Incorporated, Spherilene S.r.l., Moplefan S.p.A. and Montepolmieri Sud, S.p.A., all of the polyolefins interests of Montedison S.p.A. ''Montedison'' includes all subsidiaries, divisions, and groups and affiliates controlled by Montedison S.p.A., their respective successors and assigns, and their respective directors, officers, employees, agents and representatives. Unless otherwise indicated, ''Montedison'' does not include Montell.

2. ''HIMONT'' means HIMONT Incorporated. ''HIMON'' includes all subsidiaries, divisions, and groups and affiliates controlled by HIMONT, their respective successors and assigns, and their respective directors, officers, employees, agents and representatives.

3. ''Shell'' means N.V. Koninklijke Nederlandsche Petroleum Maatschappij (Royal Dutch Petroleum Company) (''Royal Dutch''), The ''Shell'' Transport and Trading Company, p.l.c. (''Shell T&T''), and the Shell Group.

4. ''The Shell Group'' means all companies controlled by Royal Dutch and/or Shell T&T, including Shell Oil and Shell Petroleum N.V. ''The Shell Group'' includes all subsidiaries, divisions, and groups and affiliates controlled by companies of the Shell Group, Royal Dutch or Shell T&T, their respective successors and assigns, and their respective directors, officers, and agents and representatives. Unless otherwise indicated, ''the Shell Group'' does not include Montell.

5. ''Shell Oil'' means Shell Oil Company. ''Shell Oil'' includes all subsidiaries, divisions, and groups controlled by Shell Oil, their respective successors and assigns, and their respective directors, officers, agents and representatives. Unless otherwise indicated, ''Shell Oil'' does not include Polyco.

6. ''Montell'' means Montell Polyolefins, the corporation to be formed, pursuant to the Agreement to Merge Polyolefins Businesses, to hold the majority of the polyolefins businesses of Montedison and of Shell and to be owned, directly or indirectly,

by Montedison and companies of the Shell Group. ''Montell'' includes all subsidiaries, divisions, and groups controlled by Montell, their respective successors and assigns, and their respective directors, officers, agents and representatives.

7. ''Montell Affiliates'' means companies that Montell controls as that term is defined in 16 C.F.R. § 801.1(b), except that this term shall also include (i) any entity other than Montell in which Shell or Montedison has an ownership interest of 25% or more as of December 1, 1994 and which interest is contributed to Montell, and (ii) companies in which Montell has an ownership interest of 35% or more and would have control as defined in 16 CFR 801.1(b) if ownership interests held directly or indirectly by a government were excluded.

8. ''Technipol'' means a company to be formed and held separate by Montedison under the terms and conditions of the attached Agreement to Hold Separate. ''Technipol'' includes all subsidiaries, divisions, and groups controlled by Technipol, their respective successors and assigns, and their respective directors, officers, agents and representatives.

9. ''Polyco'' means a company to be formed by Shell Oil to succeed to and conduct, under the terms and conditions of this Order, the Properties to Be Divested. ''Polyco'' includes all subsidiaries, divisions, and groups controlled by Polyco, their respective successors and assigns, and their respective directors, officers, agents and representatives.

10. ''Akzo Nobel'' means Akzo Nobel N.V., Akzo Nobel Inc., Akzo Chemicals BV and Akzo Chemicals Inc.

11. ''Mitsui'' means Mitsui Petrochemical Industries Ltd.

12. ''Union Carbide'' or ''UCC'' means Union Carbide Corporation.

B. ''Commission'' means the Federal Trade Commission.

C. ''Agreement to Merge Polyolefins Businesses'' means the agreement between Montedison and Shell Petroleum N.V. (a company of the Shell Group) dated December 30, 1993, and amendments thereto, to merger the majority of the worldwide polyolefins businesses of Montedison and of Shell into a new entity to be owned by Montedison and companies of the Shell Group.

D. ''Propylene Polymers'' or ''PP'' means homopolymers of propylene and copolymers or polyolefinic alloys of propylene with less than 50% by mol of other monoolefins and having a flexural moduls (measured according to ASTM D 790–71) higher than 4,000 Kg/cm^2.

E. ''PP Catalyst'' means supported catalyst components including compounds of transition metals of Groups IV–VIII of the Periodic Table, at least in part supported on a carrier, the essential component of which is a halogen-containing compound of magnesium, for use in production of Propylene Polymers.

F. ''Catalyst Support'' means preformed catalyst supports or support carriers which may be titanated, i.e., combined with titanium or with a titanium containing compound, to produce PP Catalyst.

G. ''Catalyst Systems'' means specified combinations of PP Catalyst and other components designed, developed, used, or suitable for use for the production of Propylene Polymers.

H. ''PP Technology'' means technology relating to Propylene Polymers and the production thereof, and to the preparation and use of Catalyst Systems.

I. ''Catalyst Technology'' means technology relating to PP Catalyst and to the production, preparation and use of PP Catalyst, Catalyst Support and Catalyst Systems.

J. ''Shell Catalyst Technology'' means Catalyst Technology, including Know-How and patent rights, developed, under development, used, offered for license or licensed to any person by companies of the Shell Group at any time prior to the date of transfer to Polyco of the Properties to Be Divested.

K. ''Shell Oil Catalyst Technology'' means Catalyst Technology, including Know-How and patent rights, developed, under development, used, offered for license or licensed to any person by Union Carbide or Shell Oil at any time prior to that date of transfer to Polyco of the Properties to Be Divested.

L. ''Unipol PP Technology'' means PP Technology and Catalyst Technology, including Know-How and patent rights, developed, under development, offered for license, or licensed to any person by UCC and/or Shell Oil in accordance with their Cooperative Undertaking Agreement dated December 22, 1983, or used by UCC and Shell Oil in their partnership PP facility at Seadrift, Texas at any time prior to the date this Order becomes final.

M. ''Unipol/SHAC Technology Business'' means the research and development, promotion, and licensing of Unipol PP Technology and Shell Oil Catalyst Technology; the research and development of PP Catalyst, Catalyst Support and Catalyst Systems utilizing Unipol PP Technology and Shell Oil Catalyst Technology; rights and obligations under, and activities conducted pursuant to, the Cooperative Undertaking Agreement between UCC and Shell Oil dated December 22, 1983, and the Polypropylene Catalyst Research and Development Agreement among Shell Oil, UCC and Shell Internationale Research Maatschappij B.V. (''The Tripartite Catalyst Research Agreement''); and the research and development, production and sale of Propylene Polymers, and the demonstration of Unipol PP Technology and Shell Oil Catalyst Technology, pursuant to the Seadrift Polypropylene Company partnership agreement between UCC and Shell Oil.

N. ''LIPP Process'' means PP Technology developed and used by Shell for the production of Propylene Polymers through a bulk liquid polymerization process.

O. ''Know-How'' means all relevant information, including knowledge, experience and specifications.

P. ''Material Confidential Information'' means competitively sensitive or proprietary information, not in the public domain, concerning the PP Technology, Catalyst Technology, PP Catalyst, Catalyst Support, or Propylene Polymers businesses.

Q. ''Properties to Be Divested'' means

1. All assets, tangible and intangible, of Shell Oil relating to PP Technology, Catalyst Technology, Propylene Polymers and PP Catalyst, including without limitation:

a. Shell Oil's Propylene Polymers plant and assets at Norco, Louisiana, and Shell Oil's associated facilities at Norco, Louisiana for splitting and separating polymer-grade propylene and propane from chemical-grade propylene;

b. Shell Oil's PP Catalyst plant and assets at Norco, Louisiana;

c. Shell Oil's interest in the Seadrift Polypropylene Company and the Propylene Polymers plant at Seadrift, Texas;

d. Shell Oil's PP Catalyst pilot plant;

e. Shell Oil's facilities and equipment (other than real property and general, chemical analytical equipment) at the Westhollow Technology Center at Houston, Texas, primarily utilized during the year prior to the transfer to Polyco of the Properties to Be Divested in research, development and technical support with respect to Shell Oil's Propylene Polymers, PP Catalyst and Catalyst Technology businesses;

f. A rent-free lease, until five years from the date of divestiture of the Properties to Be Divested or until such earlier date as the acquirer may elect, to offices and research and development space at the Westhollow Technology Center at Houston, Texas, associated with the Properties to Be Divested;

g. All owned or leased distribution facilities, rail cars and other assets used in sales or technical service of Propylene Polymers or PP Catalyst, other than real property at the headquarters offices, general sales offices, and research center of Shell Oil;

h. All intellectual property, including patent rights, trade secrets, technology and Know-How, relating to Catalyst Technology, PP Catalyst, Catalyst Systems, and Propylene Polymers;

i. All customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, research materials, technical information, management information systems, software, inventions, specifications, designs, drawings, processes and quality control data;

j. All interest in and to the contracts entered into in the ordinary course of business with customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees, including without limitation agreements with Shell Canada and Pecten, and rights under warranties and guarantees, express or implied;

k. All books, records, and files;

l. Shell Oil's interest in owned or leased real property associated with the Norco, Louisiana, and Seadrift, Texas, Propylene Polymers plants, together with appurtenances, licenses and permits;

m. Shell Oil's interest in owned or leased improvements to real property associated with the Norco, Louisiana, PP Catalyst plant, together with appurtenances, licenses and permits, and a rent-free lease to the land associated with the PP Catalyst plant for the life of the plant;

n. Shell Oil's interest in the Unipol/SHAC Technology Business and in the Cooperative Undertaking Agreement dated December 22, 1983, including but not limited to all future revenue of Shell Oil from Unipol PP Technology and Shell Catalyst Technology developed, under development, offered for license, or licensed to any person by UCC or Shell Oil at any time prior to the date of transfer to Polyco;

o. Exclusive world-wide rights to all Shell Oil trademarks and trade names relating to Propylene Polymers other than Shell Oil trademarks used by Shell Oil for its products generally, such as the ''SHELL'' mark and the Pecten emblem;

p. All licenses relating to the manufacture and sale of Propylene Polymers and PP Catalyst or the licensing of PP Technology or Catalyst Technology, including but not limited to Shell Oil's rights under the following patents:

(1) All applicable patents of Shell;

(2) All patents of Montedison and Mitsui covered by the July 30, 1985 Agreement of Himont Incorporated, Mitsui, Union Carbide Corporation, and Shell Chemical Company; any patent license agreements between Montedison and Shell; and any patent license agreements between Mitsui and Shell;

(3) Phillips U.S. Patent 4,376,851 ''crystalline polypropylene'';

(4) Studiengesellschaft Kohle U.S. Patent 4,125,698 covering production of PP with a titanium chloride/DEAC catalyst; and

(5) Amoco Chemical Company patents covering ''PP Catalyst'' identified in the patent license agreement between Amoco and Shell Oil, including Amoco U.S. Patent 4,540,679; Japan Patent Application 59350/85 and European Patent Application 159,150; and

q. Shell Oil's rights under he Tripartite Catalyst Research Agreement; the Polypropylene Agreement between Shell Research Limited and Shell Oil Company; the PP Catalyst Patent Settlement Agreement between Shell Internationale Research Maatschappij B.V. and Shell Oil Company; and the July 30, 1985 Agreement of Himont Incorporated, Mitsui, Union Carbide Corporation, and Shell Chemical Company, subject to any necessary approval of parties not subject to this Order; and

2. All Shell's worldwide rights to the ''SHAC'' trademark; all customer lists, records and files, all catalogs, and all sales promotion literature relating to sales by Shell outside the United States of PP Catalyst and Propylene Polymers manufactured by Shell Oil; and all interest in and to contracts entered into by Shell in the ordinary course of business with customers, sales representatives, distributors and agents relating to the sale, outside the United States, of PP Catalyst or Propylene Polymers manufactured by Shell Oil (together with associated bid and performance bonds).

R. ''Viability and competitiveness'' means having the capability and incentive to operate independently at annual levels of research and development, licensing, production, and sales of PP Technology, Catalyst Technology, PP Catalyst, Catalyst Support and Propylene Polymers at least equal to levels experienced during each of the two (2) calendar years immediately preceding the date of transfer to Polyco of the Properties to Be Divested, and capable through its own resources of functioning independently and competitively in the PP Technology, Catalyst Technology, PP Catalyst, and Propylene Polymers businesses.

II

It is further ordered that:

A. Shell and Shell oil, as applicable, shall divest the Properties to Be Divested, absolutely and in good faith, within six (6) months of the date this Order becomes final, and shall also divest such additional, ancillary assets and businesses and effect such arrangements as are necessary to assure the marketability and the Viability and Competitiveness of the Properties to Be Divested.

B. The period of six (6) months as specified in Paragraph II.A shall be extended to March 31, 1997, if either of the following conditions is satisfied:

1. Union Carbide declines, within thirty (30) days following receipt by Union Carbide of the report of the independent appraiser, to acquire the Properties to Be Divested for the fair market value of the Properties to Be Divested as an operating business as determined by an independent appraisal prepared in accordance with the following procedure, or as otherwise agreed, or at such price as agreed, by Shell Oil and Union Carbide:

a. Prior to the expiration of fifteen (15) days from the date this Order becomes final shell Oil will notify Union Carbide of Shell Oil's selection of an independent appraiser;

b. The independent appraiser selected by Shell Oil will perform the appraisal unless within fifteen (15) days from notification of Shell Oil's selected independent appraiser, Union Carbide objects to Shell Oil's selected independent appraiser and notifies Shell Oil of its selection of an independent appraiser;

c. Within fifteen (15) days from the date the name of Union Carbide's selected independent appraiser is received by Shell Oil, Shell Oil will either agree to Union Carbide's selected independent appraiser or request that the two selected independent appraisers jointly select, within ten (10) days of such request, another independent appraiser;

d. The compensation paid to the independent appraiser shall be paid by shell Oil or as otherwise agreed by Shell Oil and Union Carbide, and the amount of compensation shall be independent of the amount of the fair market value of the properties to Be Divested as determined by the appraisal;

e. The independent appraiser shall be authorized by Shell to question

personnel and examine all relevant books and records, including personnel and books and records of the Unipol/SHAC Technology Business, in connection with the appraisal under appropriate confidentiality provisions;

f. The independent appraisal shall be completed and presented by the appraiser to Union Carbide and Shell Oil within forty-five (45) days of the selection of the appraiser as set forth in this Paragraph II.B.1 of this Order; or

2. Union Carbide, within (30) days of receiving notice from Shell Oil that Shell proposes to divest Polyco to a named acquirer approved by the Commission, does not consent to the transfer of Polyco's interest in the Cooperative Undertaking Agreement dated December 22, 1983, to such Commission approved acquirer.

C. In the event that, prior to the expiration of the six (6) months specified in Paragraph II.A of this Order, the Commission has neither approved nor disapproved, within sixty (60) days of receipt of the application, an application for approval of a divestiture to a proposed acquirer submitted in accordance with Paragraphs II.A and II.F of this Order, the time period specified in Paragraph II.A of this Order may be extended by the Commission by the number of days in excess of sixty (60) required by the Commission to rule on the divestiture application and, if the Commission approves divestiture to a person other than Union Carbide, the Commission may further extend such period, if necessary, by thirty (30) days in order to provide Shell Oil time to comply with the requirements of Paragraph II.B.2 of this Order.

D. Provided further, if at the instance of Union Carbide over the opposition of Shell, Shell is enjoined or otherwise prohibited by court order from divesting the Properties to Be Divested, Shell shall promptly give written notice of such order to the Commission, whereupon the period within which Shell shall divest the Properties to Be Divested under Paragraphs II.A, II.B or II.C of this Order shall be extended to the earlier of (1) one year from the expiration of the time specified in Paragraph II.A of this Order and such additional time as may be allowed in Paragraphs II.B or II.C of this Order; or (2) ninety (90) days after the injunction or other order expires.

E. Respondents shall comply with all terms of the Agreement to Hold Separate, attached to this order and made a part hereof as Appendix I. Said Agreement shall continue in effect until such time as Shell and Shell Oil, as applicable, have divested all the Properties to Be Divested or until such other time as the Agreement to Hold Separate provides. Profits accumulated by Technipol during the period the Agreement to Hold Separate is in effect shall be retained by Montedison upon expiration of the Agreement to Hold Separate and shall in no event be transferred to Montell or Shell.

F. Shell and Shell Oil, as applicable, shall divest the Properties to Be Divested as an incorporated, ongoing business, identified herein as ''Polyco'' and established in accordance with the attached Agreement to Hold Separate, and shall divest the Properties to Be Divested only to Union Carbide or to another acquirer or acquirers that receive the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture is to ensure the continuation of Polyco as an ongoing and viable business engaged in the research, development, manufacture and sale of PP Catalyst and Propylene Polymers and in the research, development, and licensing of PP Technology and Catalyst Technology, and to remedy the lessening of competition resulting from the proposed acquisition as alleged in the Commission's complaint.

G. The Properties to Be Divested shall be divested free and clear of (1) all royalties, mortgages, encumbrances and liens to Shell or Montell; and (2) any contractual commitments or obligations to Shell or Montell existing as of the date of divestiture.

H. Should any transfer of an agreement, contract or license required by Paragraph II.A of this Order not be possible after reasonable effort by Shell and Shell Oil due to a person other than a party to this Order withholding its consent to the transfer, Shell Oil shall enter into an agreement with Polyco or the acquirer thereof the purpose of which agreement is to realize the same effect as such transfer. Shell Oil shall submit a copy of each such agreement with its compliance reports to the Commission pursuant to Paragraphs VIII.A and VIII.B of this Order. Further, Shell Oil shall secure, at its expense, patent licenses, or assignments of patent licenses, extending to Polyco and the acquirer thereof rights and royalty rates with respect to the manufacture and sale of Propylene Polymers and PP Catalyst from the Properties to Be Divested, and rights to expand production and sale, no less favorable than those held by Shell Oil as of the date of transfer to Polyco of the Properties to Be Divested.

III

It is further ordered that:

A. Prior to transfer of any assets or businesses from Shell into Montell or merger of any part of Shell and Montell or Montedison, Shell shall

1. Extend to Polyco, without royalty to Shell or Montell, Shell's rights under agreements relating to the research and development, manufacture and sale of PP Catalyst, Catalyst Support, and Catalyst Systems by any person, including but not limited to nonexclusive rights to sell, and to contract with Akzo Nobel for the production of, PP Catalyst and Catalyst Support;

2. Disclose to Polyco all Shell Catalyst Technology in its possession or to which it has rights;

3. Grant Polyco, without royalty to Shell or Montell, the perpetual, non-exclusive right (1) to license, subject to the rights of Union Carbide, Shell Catalyst Technology to any person worldwide; (2) to sell worldwide to any person PP Catalyst and Catalyst Systems based on Shell Catalyst Technology; and (3) to enforce intellectual property rights with respect to Shell Catalyst Technology worldwide, including without exclusion the right to sue any person who by the manufacture, use or sale of any PP Catalyst or Catalyst System infringes any Shell patent which has been applied for in any country in the world before the date this Order becomes final. All costs of any such suit by Polyco shall be borne by Polyco and all damages recovered shall be retained by Polyco; and

4. Gant Polyco, without royalty to Shell or Montell, the exclusive right, until seven years from the date of divestiture of the Properties to Be Divested, (1) to license, subject to the rights of Union Carbide, Shell Catalyst Technology to persons other than Montell and Montell Affiliates; and (2) to sell to persons other than Montell and Montell Affiliates (or LIPP Process licensees for use in their LIPP Process plants) such PP Catalyst formulations or their equivalent as were manufactured or sold by Shell, or manufactured for Shell by Akzo Nobel, prior to the date this Order becomes final; and

B. Shell and Montell shall grant to Polyco and licensees of Unipol PP Technology immunity under patents relating to PP Technology, Catalyst Technology, PP Catalyst, Catalyst Support, Catalyst Systems or Propylene Polymers, based on work conducted prior to December 31, 1997, or prior to one year after divestiture of the Properties to Be Divested, whichever is later, by persons who, as Shell personnel within one (1) year prior to the date of the formation of Montell, had access to Unipol PP Technology other

than in the public domain and other than Catalyst Technology received by Shell Oil from other companies of the Shell Group.

C. Until one (1) year after divestiture of the Properties to Be Divested no Shell research personnel who, within one (1) year prior to the date of the formation of Montell, had access to Unipol PP Technology (other than Catalyst Technology received by Shell Oil from other companies of the Shell Group) shall engage in research at facilities of Montell on PP Technology, Shell Catalyst Technology or Montedison Catalyst Tchnology. Provided, however, nothing in this Order shall require Shell to conduct any research and development for any person or to refrain from conducting research and development for, and at the expense of, any person, including Montell and communicating with, or receiving communications from, such person regarding such research and development work. The results of any research and development conducted by Shell prior to December 31, 1997, or one year after divestiture of the Properties to Be Divested, whichever is later, on Shell Catalyst Technology, including but not limited to research or development conducted for, or at the expense of, Montell, shall be provided to Polyco without payment for use in the Unipol/SHAC Technology Business.

D. Shell (including former employees of Shell transferred to Montell) shall not provide, disclose or otherwise make available to Montedison, Technipol, Montell or Montell Affiliates any Material Confidential Information relating to Unipol PP Technology or the Unipol/SHAC Technology Business (other than Catalyst Technology received by Shell Oil from other companies of the Shell Group), provided however nothing in this Paragraph III.D of this Order shall prohibit (1) Montell Affiliates who are licensees of Unipol PP Technology from receiving information, in accordance with such license, for use in their Unipol PP Technology licensed production facilities, including information obtained by Shell, prior to the formation of Montell, under The Tripartite Catalyst Research Agreement; and (2) any communication between Shell and Montell necessary to ensure that Montell and its employees make no unauthorized use or disclosure of any Material Confidential Information.

E. Until two (2) years after divestiture of the Properties to Be Divested, Shell, Montell and Technipol shall not employ, or make offers of employment to, any person employed by Shall Oil whose principal duties, during the year prior to the date of transfer to Polyco of the Properties to Be Divested, related to the management, development or operation of the Properties to Be Divested. This provision, however, does not apply to employment by Shell Oil of any employee who is terminated by Polyco or by the acquirer of the Properties to Be Divested or who is not offered employment by Polyco or by the acquirer of the Properties to Be Divested at a base salary that is at least equivalent, and incentives and benefits that are comparable, to those held by the employee prior to the divestiture of the Properties to Be Divested. Provided, however, Shell Oil shall not be required to, but may, terminate employment of any employee who refuses to accept employment with Polyco; Shell Oil shall substitute alternative personnel or equivalent qualifications, education and experience for any persons declining to accept employment with Polyco who are not terminated by Shell. Shell Oil shall encourage and facilitate employment by Polyco or by the acquirer of the Properties to Be Divested of employees whose principal duties, during the year prior to the date of transfer to Polyco of the Properties to Be Divested, related to the management, development or operation of the Properties to Be Divested; shall not offer any incentive to such employees to decline employment with Polyco or with the acquired or the Properties to Be Divested or to accept other employment in Shell; and shall remove any impediments that exist which may deter such employees from accepting employment with Polyco or with the acquirer of the Properties to Be Divested, including but not limited to the payment for the benefit of the employees of all accrued bonuses, pensions and other accrued benefits to which such employees are entitled as of the date of the divestiture. Shall Oil shall not impose any loss of pension benefits on employees to which such employees are entitled under the Shell Oil pension plan as administered under ERISA.

IV

It is further ordered that from the date this Order becomes final and continuing until three (3) years following the date of the divestiture required by this Order, Shell shall, at Polyco's request or at the request of the acquirer of the Properties to Be Divested, contract with Polyco or the acquirer of the Properties to Be Divested to supply to Polyco or the acquirer propylene monomer, in such quantities and product grade as Polyco or the acquirer may request for use in the Properties to Be Divested subject only to the capacity and grade constraints of Shell's propylene monomer production facilities in the United States and preexisting contractual obligations to persons other than Shell, Montedison, and Montell. The price, terms, and conditions at which Shell shall supply any grade of propylene monomer to Polyco and to the acquirer of the Properties to Be Divested shall be no less favorable to Polyco and the acquirer of the Properties to Be Divested than the price, terms, and conditions at which Shell supplies such grade of propylene monomer, directly or indirectly, to Montell in North America, through exchange or otherwise.

V

It is further ordered that:

A. If Shell or Shell Oil, as applicable, has not divested, absolutely and in good faith and with the Commission's prior approval, the Properties to Be Divested within the time required by Paragraph II.A of this Order or within such additional time as may be allowed in Paragraphs II.B, II.C or II.D of this Order, the Commission may appoint a trustee to divest the Properties to Be Divested. In the event that the Commission or the Attorney General brings an action pursuant to § 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. 45(*l*), or any other statute enforced by the Commission, Shell shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Shell to comply with this Order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph V.A of this Order, Shell shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Shell, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Shell has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Shell of the identity of any proposed trustee,

Shell shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Properties to Be Divested.

3. Within ten (10) days after appointment of the trustee, Shell shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this Order.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph V.B.3 to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records and facilities related to the Properties to Be Divested or to any other relevant information, as the trustee may request. Shell and Polyco shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Shell and Polyco shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Any delays in divestiture caused by Shell or Polyco shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, in the case of a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Shell's absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made in the manner and to the acquirer or acquirers as set out in Paragraph II.A of this Order; provided, however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by Shell from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of Shell, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of Shell, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission or, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Shell and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Properties to Be Divested.

8. Shell shall indemnify the trustee and hold the trustee harmless against any liabilities, losses, claims, damages, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, claims, damages, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph V.A. of this Order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

11. The trustee shall have no obligation or authority to operate or maintain the Properties to Be Divested pending completion of the divestiture.

12. The trustee shall report in writing to Shell Oil and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

VI

It is further ordered that:

A. Royal Dutch, Shell T&T and Montedison shall obligate Montell, Montedison shall obligate Technipol, and Shell Oil shall obligate Polyco, to be bound by this Order and insure compliance with this Order by Montell, Technipol and Polyco, respectively.

B. Shell, Montedison and Montell shall not restrict any Montell Affiliate from licensing PP Technology or Catalyst Technology from the Unipol/SHAC Technology Business or Technipol or from purchasing PP Catalyst or Catalyst Systems from Polyco or Technipol.

C. Polyco shall not withhold its consent, except for good cause, to Union Carbide to grant or negotiate license fees and royalty rates below those minimums specified in the Cooperative Undertaking Agreement dated December 22, 1983, and attachments thereto.

D. Shell, Montedison, Montell and Technipol shall not enter into or renew any agreement or understanding with any developer or licensor of PP Technology or Catalyst Technology or any manufacturer, or seller of PP Catalyst, Catalyst Support, or Catalyst Systems limiting the geographic area within which, or limiting the persons to whom, such person may license PP Technology or Catalyst Technology or may manufacture and sell PP Catalyst, Catalyst Support, or Catalyst Systems, unless such agreement or understanding relates exclusively to markets other than the United States and has no effect on United States commerce, including but not limited to export commerce. Nothing in this Paragraph VI.D shall prohibit Shell, Montedison, Montell or Technipol from legitimately designating a sales agent for the sale of, or contract manufacturer for the production of, PP Catalyst or Propylene Polymers in any geographic area, or from limiting the persons, geographic area or uses for which they respectively grant legitimate licenses of their PP Technology or Catalyst Technology.

E. Montedison, Montell and Technipol shall not (1) enforce any provision in any agreement with Mitsui providing for sharing of royalties with respect to licenses granted by Mitsui after the date this Order becomes final for use of PP Technology and Catalyst Technology in the United States in Propylene Polymers plants and in the production of Propylene Polymers; or (2) enter into or renew any agreement with Mitsui providing for sharing of royalties with respect to licensing of PP Technology or Catalyst Technology in the United States for use in Propylene Polymers plants and in the production of Propylene Polymers.

VII

It is further ordered that, for a period of ten (10) years from the date this Order

becomes final, Shell, Montedison and Montell shall not, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any stock, share capital, equity, or other interest in any concern, corporate or non-corporate, other than the acquisition by Shell or Montedison of additional shares of Montell, engaged in at the time of such acquisition, or within two (2) years preceding such acquisition engaged in,

1. the research and development (other than only implementation of technology licensed from others), or sale or licensing to any person, of PP Technology or Catalyst Technology anywhere in the world;

2. the research and development, sale, or manufacture for sale of PP Catalyst, Catalyst Support, or Catalyst Systems anywhere in the world; or

3. the manufacture or sale of Propylene Polymers in the United States or Canada; or

B. Acquire any assets used for or previously used for (and still suitable for use for)

1. the research and development (other than only implementation of technology licensed from others), or sale or licensing to any person, of PP Technology or Catalyst Technology anywhere in the world;

2. the research and development, sale, or manufacture for sale of PP Catalyst, Catalyst Support, or Catalyst Systems anywhere in the world; or

3. the manufacture or sale of Propylene polymers in the United States or Canada.

Provided, however, these prohibitions shall not relate to the construction of new facilities or the acquisition of new or used equipment in the ordinary course of business from a person other than the persons referred to in Paragraph VII.A of this Order. Provided, further that this Paragraph VII of this Order shall not apply to the acquisition of Technipol by Montell following completion of the divestiture of the Properties to Be Divested and expiration of the attached Hold Separate Agreement.

VIII

It is further ordered that:

A. Within sixty (60) days from the date this Order becomes final and every sixty (60) days thereafter until Shell has fully complied witht he provisions of Paragraphs II and V of this Order, Shell Oil shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with Paragraphs II and V of this Order. Shell Oil shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II and V of the Order, including a description of all substantive contacts or negotiations for the divestitute and the identity of all parties contacted. Shell Oil shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

B. One (1) year from the date this Order becomes final, annually for the next nine (9) years on the anniversary of the date this Order becomes final, and at other times as the Commission may require, Royal Dutch, Shell Oil, Montendison and Montell shall each file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with this Order.

IX

It is further ordered that Royal Dutch, Shell T&T, Shell Oil, Montedison and Montell shall each notify the Commission at least thirty (30) days perior to any proposed change in such company, such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in such company that may affect compliance obligations arising out of this Order.

X

It is further ordered that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request, and on reasonable notice, Shell, Montedison and Montell shall each permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, momoranda, and other records and documents in the possession or under the control of Shell, Montendison or Montell, as applicable, relating to any matters contained in this Order; and

B. Upon five (5) days notice to Shell, Montedison or Montell and without restraint or interference from it, to interview its officers, directors or employees, who may have counsel present, regarding such matters.

XI

It is further ordered that this Order shall terminate twenty (20) years from the date this Order becomes final.

Attachment I

In the Matter of: Montedison S.p.A., a corporation, HIMONT Incorporated, a corporation, Royal Dutch Petroleum Company, a corporation, The ''Shell'' Transport and Trading Company, p.l.c., a corporation, and Shell Oil Company, a corporation, File No. 941–0043.

Agreement to Hold Separate

This Agreement to Hold Separate (''Agreement'') is by and among Montedison S.p.A., a corporation organized, existing and doing business under the laws of Italy with its principal executive offices located at Foro Buonaparte, 31, 20121 Milan, Italy, and its wholly-owned subsidiary, HIMONT Incorporated, a corporation organized, existing and doing business under the laws of the State of Delaware with its principal executive offices located at Three Little Falls Centre, 2801 Centerville Road, Wilmington, Delaware 19850–5439 (collectively ''Montedison''); Royal Dutch Petroleum Company, a corporation organized, existing and doing business under the laws of the Netherlands with its principal executive offices located at Carel van Bylandtlaan 30, The Hague, The Netherlands, and The ''Shell'' Transport and Trading Company, p.l.c., a corporation organized, existing and doing business under the laws of England with its principal executive offices located at Shell Centre, London SE1 7NA, England, and their wholly-owned subsidiary, Shell Oil Company, a corporation organized, existing and doing business under the laws of the State of Delaware with its principal executive offices located at One Shell Plaza, Houston, Texas 77002 (collectively ''Shell''); and the Federal Trade Commission (the ''Commission''), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. § 41, et seq. (collectively, the ''Parties'').

Premises

Whereas, on or about December 30, 1993, Montedison and Shell Petroleum N.V., a holding company of the Shell Group, entered into an agreement providing for the merger (hereinafter the ''Acquisition'') of the majority of the polyolefin assets and businesses of Montedison (hereinafter the ''Montedison Merged Assets'') and the majority of the polyolefin assets and

businesses of Shell (hereinafter the ''Shell Merged Assets''); and

Whereas, Montedison and Shell each develop a license PP Technology and Catalyst Technology and each develop, manufacture and sell PP Catalyst and Propylene Polymers; and

Whereas, Montedison will establish Technipol and hold Technipol separate from Montell in accordance with the Decision of the Commission of the European Communities in Case No. IV/M. 269–SHELL/MONTECATINI; and

Whereas, the Commission is now investigating the Acquisition to determine if it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the attached Agreement Containing Consent Order (''Consent Order''), which would require the divestiture of certain assets, the Commission must place the Consent Order on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving the *status quo ante* of the Montedison Merged Assets and the Shell Merged Assets, respectively, during the period specified in Paragraph 4 of this Agreement, divestiture resulting from any proceeding challenging the legality of the Acquisition might not be possible, or might be less than an effective remedy; and

Whereas, the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of the Properties to Be Divested as described in Paragraph I.Q of the Consent Order and the Commission's right to have the Properties to Be Divested continue as a separate, viable and independent entity; and

Whereas, the purpose of this Agreement and the Consent Order is to:

(i) Ppreserve the Properties to Be Divested, also referred to herein as ''Polyco,'' as a viable business independent from Montedison, pending the divestiture of the Properties to Be Divested as a viable and ongoing enterprise;

(ii) Preserve Technipol as a viable business independent from Shell, pending the divestiture of the Properties to Be Divested as a viable and ongoing enterprise; and

(iii) Remedy any anticompetitive effects of the Acquisition; and

Whereas, Montedison's and Shell's entering into this Agreement shall in no way be construed as an admission by Montedison and Shell that the Acquisition is illegal, and this Agreement shall in no way be construed as limiting in any way the obligations of Montedison and Shell pursuant to the Decision of the Commission of the European Communities in Case No. IV/M. 269–SHELL/MONTECATINI; and

Whereas, Montedison and Shell understand that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, therefore, upon understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Order, the Commission will not seek a temporary restraining order, preliminary injunction, or permanent injunction with respect to the Acquisition, and in recognition that the Commission may exercise any and all rights to enforce this Agreement and the Consent Order to which it is annexed and made a part thereof, and, in the event the required divestiture is not accomplished, to seek divestiture of the Properties to Be Divested and such other relief as the Commission may consider appropriate, the Parties agree as follows:

1. Montedison and Shell agree that from the date this Agreement is signed by Shell and Montedison until the earliest of the dates listed in Paragraphs 1.a or 1.b, they each will comply with the provisions of this Agreement:

a. Ten days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of Section 2.34 of the Commission's Rules; or

b. The day after the divestiture required by the Consent Order has been completed.

2. Montedison, Royal Dutch, Shell T&T and Shell Oil agree to execute and be bound by the attached Agreement Containing Consent Order and to comply, from the date this Agreement is accepted, with the provisions of the Consent Order as if it were final.

3. The terms capitalized herein shall have the same definitions as in the Consent Order. In addition, the following terms used herein shall have the following definitions:

a. ''Montedison PP Technology'' means PP Technology and Catalyst Technology, including Know-How and patent rights, developed, under research and development, used, offered for license, or licensed to any person by Montedison at any time prior to the date of transfer to Technipol of the Montedison Properties to Be Transferred. For purposes of this Agreement Catalloy process and related catalyst technology and technology concerning the production of PP Catalyst or the production of any other component of Catalyst Systems shall be excluded from ''Montedison PP Technology.''

b. ''Montedison Properties to Be Transferred'' means the businesses, rights and interests, and other assets, tangible and intangible, required to be transferred from Montedison to Technipol pursuant to Paragraph 8 of this Agreement.

c. ''Existing Montedison Licenses'' means licenses of Montedison PP Technology to persons other than Montell Affiliates in effect as of the date of transfer to Technipol of the Montedison Properties to Be Transferred and includes so-called ''catalyst use know-how licenses,'' ''process know-how licenses'' and ''patent licenses.''

d. ''Improvements'' means all refinements, optimizations, or new technical developments, patentable or unpatentable, of Know-How, PP Technology and Catalyst Technology, with commercial application, other than Major Advances.

e. ''Major Advances'' means all new technical developments of and changes, patentable or unpatentable, to existing Know-How, PP Technology and Catalyst Technology with commercial application, of the type generally recognized in the industry as revolutionary or of major consequence and would, upon commercial implementation, (a) reduce production costs of Propylene Polymers by at least one (1) cent per pound; (b) significantly increase the quality, productivity or selling potential of the PP Catalyst, Catalyst Support or Catalyst System, or the quality or selling potential of the Propylene Polymers; or (c) enable production of new Propylene Polymers commercially competitive primarily in end-uses for which Propylene Polymers produced and sold commercially have not been previously suitable for technological reasons. Major Advances include, for example:

i. In the case of PP Technology, elimination of a unit operation, addition of a unit operation, or introduction of a new comonomer or additive;

ii. In the case of PP Catalyst, a change in the major type of Catalyst Support;

iii. In the case of Catalyst Systems, a change in the major type of components

or elimination of one component together with a type change in another component; and

iv. In the case of Propylene Polymers, new compositions or types that display chemical and physical properties not previously achievable by the relevant technology.

4. Montedison and Shell agree that from the date this Agreement is signed by Montedison and Shell until March 1, 1995, Montedison will hold the Montedison Merged Assets separate and apart from Shell and from Montell, and Shell will hold the Shell Merged Assets separate and apart from Montedison and from Montell.

5. Commencing prior to, or concurrently with, transfer to Montell of the Shell Merged Assets, Shell will hold the Properties to Be Divested as they are presently constituted (hereafter ''Polyco'') separate and apart on the following terms and conditions:

a. Shell and Shell Oil, as applicable, shall transfer to Polyco all ownership and control of the Properties to Be Divested. Polyco shall be held separate and apart and shall be operated independently of Shell (meaning here and hereinafter, Shell excluding Polyco and excluding all personnel connected with Polyco as of the date this Agreement is signed) except to the extent that Shell Oil must exercise direction and control over Polyco to assure compliance with this Agreement or with the Consent Order.

b. Shell Oil shall separately incorporate Polyco and cause Polyco to adopt new Articles of Incorporation and By-laws and any other required documents for Polyco that are not inconsistent with other provisions of this Agreement. Shall Oil shall also elect a new six-person board of directors of Polyco (''New Board'') prior to, or concurrently with, transfer of any assets or businesses from Shell into Montell or merger of any part of Shell and Montell or Montedison. Questions before the New Board shall be approved by a simple majority of the directors voting on the matter, provided that Polyco shall engage in no transaction that is precluded by this Agreement or by the Consent Order. Shell Oil may elect the directors to the New Board; provided, however, that such New Board shall consist of at least three outside directors neither previously nor currently employed by Shell or Montedison; two officers of Polyco; and a maximum of one Shell Oil (but not Royal Dutch, Shell T&T or Montell) director, officer, employee, or agent; provided, further, that such Shell Oil director, officer, employee or agent shall enter into a confidentiality agreement in accordance with the provisions of Paragraph 5.h hereof and shall not be a person involved in Shell or Montell's Propylene Polymers or PP Catalyst businesses, as defined in Paragraph I. of the Consent Order. Such director who is also a Shell Oil director, officer, employee or agent shall participate in matters that come before the New Board only for the limited purpose of carrying out Shell Oil's and Polyco's responsibilities under this Agreement or under the Consent Order. Shell Oil will take no action to delay or limit expansion of production capacity by Polyco. Except as permitted by this Agreement, the Shell Oil director shall not participate in any matter, or attempt to influence the votes of the other directors with respect to matters, including but not limited to expansion of capacity, that would involve a conflict of interest if Shell Oil and Polyco were separate and independent entities. In the case of deadlock by the New Board on any question in which the Shell Oil director participates, a second vote shall be taken on the question and the Shell Oil director shall not vote. The New Board shall include a chairman who is independent of Shell and is competent to assure the continual Viability and Competitiveness of Polyco. Shell Oil shall notify the Commission in its next compliance report submitted pursuant to Paragraph VIII.A of the Consent Order of the identity and relevant qualifications and experience of any person whom Shell Oil has appointed as an original or subsequent director of Polyco.

c. Except for the single Shell Oil director, officer, employee, or agent serving on the ''New Board'' (as defined in Paragraph 5.b), Shell shall not permit any director, officer, employee or agent of Shell to also be a director, officer, employee or agent of Polyco. In the event any members of management of the Properties to Be Divested should choose not to accept employment with Polyco, or should retire or otherwise leave their management positions, the non-Shell (as Shell is defined in Paragraph 5.a hereof) directors serving on the New Board (as defined in Paragraph 5.b hereof) shall have the exclusive power to replace such members of management.

d. Polyco shall be staffed with sufficient employees to maintain the Viability and Competitiveness of the Properties to Be Divested. Shell, Montell and Technipol shall not employ, or make offers of employment to, any person employed by Shell Oil whose principal duties, during the year prior to the date of transfer to Polyco of the Properties to Be Divested, related to the management, development or operation of the Properties to Be Divested. This provision, however, does not apply to employment by Shell Oil of any employee who is terminated by Polyco or who is not offered employment by Polyco at a level of compensation and benefits at least equivalent to those held by the employee prior to the date of transfer to Polyco of the Properties to Be Divested. Shell Oil shall encourage and facilitate employment by Polyco of Shell Oil employees who had line responsibility with respect to the Properties to Be Divested in the year prior to the transfer to Polyco of the Properties to Be Divested; shall not offer any incentive to such employees to decline employment with Polyco or accept other employment in Shell; and shall remove any impediments that exist which may deter such employees from accepting employment with Polyco, including but not limited to the payment, or transfer for the account of the employee, of all accrued bonuses, pensions and other accrued benefits to which such employees would otherwise have been entitled had they remained in the employment of Shell Oil.

e. Shell shall not exercise direction or control over, or influence directly or indirectly, Polyco; provided, however, that Shell Oil may exercise only such direction and control over Polyco as is necessary to assure compliance with this Agreement or with the Consent Order, including dissolution, merger, consolidation, bankruptcy, sale of substantially all assets, major acquisitions, issuance of equity securities or any change in the legal status of Polyco.

f. Shell shall not cause or permit any destruction, removal, wasting, deterioration or impairment of Polyco, except for ordinary wear and tear. Shell Oil shall maintain the marketability and the Viability and Competitiveness of Polyco and shall not sell, transfer, encumber (other than in the normal course of business) or otherwise impair its marketability or Viability and Competitiveness. Shell Oil shall provide Polyco with sufficient working capital to operate at current rates of operation, to perform all necessary routine maintenance to, and replacement of, plant and equipment of the Properties to Be Divested, and to maintain the Viability and Competitiveness of the Properties to Be Divested.

g. Shell shall not change the composition of the management of Polyco except that the non-Shell (as Shell is defined in Paragraph 5.a hereof) directors or members serving on the New Board (as defined in Paragraph 5.b hereof) shall have the power to remove

any employee. With the exception of the single Shell Oil director, Shell Oil shall not remove directors of the New Board except for cause.

h. Except as permitted by this Agreement, the Shell Oil New Board member shall not in his or her capacity as a New Board member receive Material Confidential Information and shall not disclose any such information received under this Agreement to Shell, Montedison or Montell or use it to obtain any advantage for Shell, Montedison or Montell. Any Shell Oil director, officer, employee or agent who obtains or may obtain confidential information under this Agreement shall enter a confidentiality agreement prohibiting disclosure of confidential information until the day after the divestitures required by the Consent Order have been completed.

i. Except as required by law and except to the extent that necessary information is exchange in the course of defending investigations or litigation, obtaining legal advice, acting to assure compliance with this Agreement or the Consent Order (including accomplishing the divestitures), or negotiating agreements to dispose of assets, Shell, Montedison and Montell shall not receive or have access to, or the use of, any Material Confidential Information of Polyco, except as such information would be available to Montedison in the normal course of business if the Acquisition had not taken place. Any such information that is obtained by Shell Oil pursuant to this Paragraph shall only be used for the purposes set out in this Paragraph. Provided, however, until divestiture of Polyco, hourly personnel assigned to Polyco plant operations may continue to be covered by existing contracts between Shell Oil and any unions representing such employees; and Shell Oil may assign Shell Oil personnel to perform the accounting, analytical chemistry, human resources, information systems, transportation services and tax functions for Polyco provided that such Shell Oil personnel shall enter into confidentiality agreements in accordance with the provisions in Paragraph 5.h hereof and provided further that those Shell Oil personnel working with Material Confidential Information of Polyco shall not be involved in Montell's PP Technology, Catalyst Technology, PP Catalyst or Propylene Polymers business, as defined in Paragraph I. of the Consent Order for the period that Shell must comply with Paragraph 5 hereof. Provided further that the New Board (as defined in subparagraph 5.b hereof) may designate and contract with Shell Oil as a nonexclusive sales agent for sales of PP Catalyst or Propylene Polymers by Polyco outside the United States, provided that all Shell Oil personnel with access to Material Confidential Information of Polyco in connection with such contract or agency shall, prior to gaining such access, enter into confidentiality agreements in accordance with the provisions of Paragraph 5.h hereof.

j. All earnings and profits of Polyco shall be retained separately in Polyco.

k. Should any transfer to Polyco of an agreement, contract or license required to be included in the Properties to Be Divested not be possible after reasonable effort by Shell Oil due to another party withholding its consent to the transfer, Shell Oil shall enter into an agreement with Polyco the purpose of which agreement is to realize the same effect as such transfer. Further, Shell Oil shall secure, at its expense, patent licenses, or assignments of patent licenses, extending to Polyco rights and royalty rates with respect to the manufacture and sale of Propylene Polymers and PP Catalyst, and rights to expand production and sale, no less favorable than those held by Shell Oil as of the date of transfer to Polyco of the Properties to Be Divested.

6. Prior to, or concurrently with, transfer to Montell of the Shell Merged Assets, Royal Dutch and Shell T&T shall ensure that companies of the Shell Group shall:

a. Take such actions as are necessary to establish and maintain separate and apart from Montell the Koninklijke/Shell Laboratorium Amsterdam (''KSLA'') research and development laboratory of Shell Research B.V., a company of the Shell Group; and

b. Take such actions as are necessary to ensure that no Shell research personnel who have had access to Unipol PP Technology (other than Catalyst Technology received by Shell Oil from other companies of the Shell Group) within one (1) year prior to the date of the formation of Montell engage in research at facilities of Montell.

7. Shell Oil's Pecten international marketing organization shall not market or distribute products of Montell but may, as requested by Polyco, market and distribute products produced by Polyco.

8. Prior to, or concurrently with, transfer to Montell of the Montedison Merged Assets, Montedison shall

a. transfer to Technipol as an ongoing business:

i. PP research and development facilities in the Giulio Natta Research Center in Ferrara, Italy, by outright transfer or lease, including transfer of its PO3 pilot plant, equipment, rights-of-way, easements, and other rights and assets appropriate and sufficient to preserve the Viability and Competitiveness of the Montedison PP Technology business.

ii. The irrevocable worldwide right, for a period not to expire prior to the divestiture of the Properties to be Divested, to grant to any person perpetual Montedison PP Technology licenses subject to any lawful rights previously granted to persons not parties to this Agreement. This right shall be exclusive subject to the right of Montell to license Montell Affiliates.

iii. Existing Montedison Licenses and Montedison's PP Catalyst supply contracts with persons other than Montell Affiliates. Should any such transfer not be possible after reasonable effort by Montedison due to the other party withholding its consent to the transfer, Montedison or Montell shall enter into an agreement with Technipol to service the licenses not transferred to Technipol and account for revenues from such licenses strictly for the benefit and account of Technipol, the purpose of which agreement is to realize to the extent possible the same effect of a transfer of such licenses.

iv. Montedison's PP Catalyst sales business.

v. Personnel who possess the specific skills and experience required by Technipol sufficient to support, conduct and preserve the Viability and Competitiveness of the Montedison Properties to Be Transferred. Montedison shall appoint Technipol's managers on the basis of demonstrated ability and specific experience in the Montedison PP Technology field.

vi. Such other assets (including cash and working capital) and personnel as may be required to effectuate the remedial purpose of this Order and to assure that Technipol will be capable of operating independently at the same level of research, development and licensing of PP Technology, and sale of PP Catalyst as existed in the Montedison Properties to Be Transferred on average during the two (2) years prior to the Transfer Date.

b. Physically separate, to the extent feasible, the assets, personnel, offices and facilities transferred or leased to Technipol from those retained in Montedison and from those transferred to Montell so as to assure the independence of Technipol from Montell and to assure that Material Confidential Information that is not to be made available to another person pursuant to the Consent Order and this Agreement is not accessible to such person.

c. Assign to Technipol all other agreements in which Montedison grants to a person other than Montell or a Montell Affiliate the right to practice Montedison PP Technology. Should any such assignment not be possible after reasonable effort by Montedison due to the other party withholding its consent to the assignment, Montedison or Montell shall enter into an agreement with Technipol the purpose of which is to realize the effect of such assignment.

d. Take such actions as necessary to ensure an ongoing agreement between Montell and Technipol pursuant to which Montell will provide to Technipol, at Montell's cost, services (such as building security, fire protection, trash removal, shipping and receiving, accounting and cleaning services), utilities and common maintenance for the Montedison Properties to Be Transferred, as may be requested by Technipol.

Provided, however, that Montedison shall retain for Montell ownership of, and free right to practice and use, and sell product resulting from the practice or use of, all Montedison PP Technology and PP Catalyst production assets.

9. Commencing prior to, or concurrently with, transfer to Montell of the Montedison Merged Assets, Montedison will hold Technipol as constituted in accordance with Paragraph 8 of this Agreement separate and apart on the following terms and conditions:

a. Montedison shall separately incorporate Technipol and adopt Articles of Incorporation and By-laws for Technipol that are not inconsistent with other provisions of this Agreement. Montedison shall also elect a board of directors of Technipol prior to, or concurrently with, transfer to Montell of the Montedison Merged Assets.

b. Technipol shall be operated independently of Montell and Shell, and neither Shell nor Montell shall have any ownership or other financial interest in Technipol or exercise direction or control over, or influence directly or indirectly, Technipol, except as specifically authorized by this Agreement.

c. Montedison shall not permit any director, officer, employee or agent of Montell, or any director, officer, employee or agent of Montedison involved in management or oversight of Montell, to also be a director, officer, employee or agent of Technipol.

d. Any Montedison director, officer, employee or agent who obtains or may obtain Material Confidential Information of Technipol under this Agreement shall not disclose to Shell or Montell such Material Confidential Information until the day after divestiture of the Properties to Be Divested has been completed.

e. Montedison shall not cause or permit any destruction, removal, wasting, deterioration or impairment of Technipol, except for ordinary wear and tear. Montedison shall also maintain the Viability and Competitiveness of Technipol and shall not sell, transfer, encumber (other than in the normal course of business) or otherwise impair its Viability and Competitiveness.

f. The purpose of the formation of Technipol and the transfer to it of the Montedison Properties to Be Transferred is to ensure the continuation of a separate, full-functioning entity to conduct the business of the Montedison Properties to Be Transferred and to preserve the Viability and Competitiveness of that business until the Properties to Be Divested are divested.

g. Montell shall provide Technipol and its licensees and prospective licensees access to any and all of Montell's commercial scale PP plants using Montedison PP Technology for demonstrating the PP Technology and Catalyst Technology used in the plant to prospective licensees and shall provide technical assistance and training for personnel of Technipol's licensees. In consideration for providing such services and assistance to Technipol, Montell may charge no more than its actual hourly cost of pay and benefits for the services of Montell personnel providing technical assistance and training and, in the case of technical assistance or training by Montell personnel at a licensee's or prospective licensee's facilities, reasonable and customary travel and per diem subsistence costs of such personnel.

h. With respect to future Improvements or Major Advances in Montedison PP Technology by Technipol or Montell:

i. Technipol and Montell shall each own any Improvements or Major Advances it develops at its own cost or finances.

ii. Technipol shall have the right to license to any person any results obtained from research and development in the field of PP Technology performed by Technipol under contract for Montell.

iii. Technipol may grant Montell a paid-up, royalty-free, perpetual and non-exclusive right to use any Improvements owned by Technipol or received by Technipol from its licensees.

iv. Technipol may grant Montell a non-exclusive license to use any Major Advances owned by Technipol or received by Technipol from its licensees on a non-discriminatory basis on terms available to other persons.

v. Montell shall grant Technipol a paid-up, royalty-free, perpetual and non-exclusive right to license persons other than Montell Affiliates to use any Improvements owned by Montell.

vi. Montell shall grant Technipol the right to license third parties to use any Major Advances owned by Montell, unless Montell is contractually prohibited, by contract with any person other than a Montell Affiliate or a respondent, from sharing such Major Advances with Technipol. Such grant to Technipol shall be on reasonable terms and conditions which shall, in any event, be no less favorable to Technipol than those offered by Montell to any person other than a Montell Affiliate.

i. Technipol shall have the exclusive right, subject to any lawful rights previously granted to persons not parties to this Agreement, to enforce intellectual property rights with respect to Montedison PP Technology, and to sell PP Catalyst to persons other than Montell and Montell Affiliates.

j. Except as expressly provided in this Agreement, all sales, licensing and other business relationships between Technipol and either Montedison, Shell or Montell shall be conducted on a non-discriminatory basis on terms available to other persons.

k. Pursuant to a PP Catalyst supply agreement between Montell and Technipol, Montell shall produce PP Catalyst, including Improvements thereto, for Technipol for use by Technipol's licensees and PP Catalyst customers, subject to the rights of Akzo Nobel. To this end, Montell shall dedicate such portion of its PP Catalyst production capacity as is required to supply Technipol's licensees and PP Catalyst customers. The price for PP Catalyst supplied by Montell to Technipol shall be negotiated between Montell and Technipol, but in no event shall be more than the lowest contract price, in terms of the price per pound of Propylene Polymers produced per pound of PP Catalyst, for PP Catalyst available to a licensee other than a Montell Affiliate or government controlled licensee, as of December 31, 1993, recalculated in accordance with the pricing formula in the PP Catalyst supply contract for that licensee, less eight percent (8%).

l. Pursuant to a Catalyst Support supply agreement between Montell and Technipol, Montell shall produce Catalyst Support, including Improvements thereto, for Technipol for sale to Akzo Nobel. The price for Catalyst Support supplied by Montell to

Technipol shall be negotiated between Montell and Technipol, but in no event shall be more than the price charged to Akzo Nobel as of December 31, 1993, recalculated in accordance with the pricing formula in the Catalyst Support supply contract between Akzo Nobel and Himont, less eight percent (8%).

m. Notwithstanding any agreement entered into by Montell and Technipol pursuant to Paragraphs 9.k and 9.l of this Agreement, Technipol may acquire PP Catalyst and Catalyst Support from any other person.

n. Technipol shall provide to Montell, on the date of transfer to Technipol of the Montedison Properties to Be Transferred and on the first day of every calendar quarter thereafter, an estimate of its requirements for PP Catalyst and Catalyst Support for the following twelve (12) months. Montell shall supply PP Catalyst and Catalyst Support in quantities sufficient to maintain an inventory of PP Catalyst and Catalyst Support equivalent to Technipol's requirements for PP Catalyst and Catalyst Support for a period of six (6) months. In the event that Montell is unable to maintain an inventory of PP Catalyst and Catalyst Support sufficient to supply Technipol's requirements for PP Catalyst and Catalyst Support for a period of six (6) months, Montell will grant to Technipol the right and Know-How necessary to produce, or have produced on its behalf, PP Catalyst and Catalyst Support.

o. In the case of any shortage of PP Catalyst or Catalyst Support production Montell shall continue to supply Technipol with its requirements except that in the case of shortages that are not the result of Montell's actions Montell may allocate PP Catalyst and Catalyst Support to Technipol and Montell and Montell Affiliates on a pro rata basis based on the previous twelve (12) months. In the case of any shortage of PP Catalyst or Catalyst Support to Technipol, Technipol may request that Montell expand the production facilities, at Montell's expense, in order to meet the requirements of Technipol.

p. Technipol shall have the sole right to determine, subject to PP Catalyst supply contracts with persons other than Montell or Montell Affiliates existing as of the date the Montedison Properties to Be Transferred are transferred to Technipol and the existing Akzo agreement, the sales price, quantity and type of PP Catalyst and Catalyst Support sold by Technipol to any person.

q. Montell and Shell shall not interfere in, or attempt to influence, any decisions or activities of Technipol.

r. Shell, Montedison, Montell, Technipol and Polyco shall not exchange or discuss between each other, directly or indirectly, current or future intentions, plans or forecasts for pricing, production or capacity for PP Catalyst, Catalyst Support, Catalyst Systems or Propylene Polymers, or royalty rates for licensing PP Technology or Catalyst Technology to others, except as required between Montell and Technipol in accordance with Paragraphs 9.k and 9.l of this Agreement.

10. Except as otherwise provided in the Consent Order or this Agreement, as required for the purpose of tax return preparation, compliance with any law or request from a revenue authority, or to the extent that necessary information is exchanged in the course of evaluating and consummating the formation of Montell, Technipol or Polyco, defending government investigations or litigation, or negotiating to dispose of assets:

a. Neither Montedison, Montell, Technipol nor Polyco shall provide, disclose or otherwise make available to Shell any Material Confidential Information.

b. Neither Montedison nor Technipol shall provide, disclose or otherwise make available to Montell any Material Confidential Information of Technipol.

c. Shell shall not provide, disclose or otherwise make available to Montedison, Montell or Technipol any Material Confidential Information of Polyco or the Unipol/SHAC Technology Business (other that Catalyst Technology received by Shell Oil from other companies of the Shell Group), provided however, nothing in this Paragraph 10.c of this Agreement shall prohibit (a) Montell Affiliates who are licensees of Unipol PP Technology from receiving information, in accordance with such license, for use in their Unipol PP Technology licensed production facilities, including information obtained by Shell, prior to the formation of Montell, under The Tripartite Catalyst Research Agreement; and (b) any communication between Shell and Montell necessary to ensure that Montell and its employees make no unauthorized use or disclosure of any Material Confidential Information.

d. Neither Montell nor Shell shall provide, disclose or otherwise make available to Montedison or Technipol any Material Confidential Information.

Provided, however, that nothing in this Agreement shall limit or prohibit (a) Montell, Technipol or Polyco from licensing or otherwise doing business on a nondiscriminatory basis with each other or with any entity in which Montedison or a Shell Group company has an interest; or (b) persons elected by Shell or Montedison to the Montell board of directors from participating in decisions relating to Montell if they do not also participate in decisions relating to similar businesses of Technipol or Polyco.

11. To the extent that this Agreement or the Consent Order requires Shell or Montedison to take, or prohibits Shell or Montedison from taking, certain actions that otherwise may be required or prohibited by contract, Shell and Montedison shall abide by the terms of this Agreement and the Consent Order and shall not assert as a defense such contract rights in a civil penalty action brought by the Commission to enforce the terms of this Agreement or the Consent Order.

12. Should the Federal Trade Commission seek in any proceeding to compel Shell (meaning here and hereinafter Shell including Polyco) to divest itself of the Montedison Merged Assets, to compel Shell to divest any assets of businesses of the Shell Merged Assets or the Montedison Merged Assets that it may hold, to compel Montedison to divest itself of the Shell Merged Assets, to compel Montedison to divest any assets or businesses of the Montedison Merged Assets or the Shell Merged Assets that it may hold, or to seek any other injunctive or equitable relief for any failure to comply with the Consent Order of this Agreement, or in any way relating to the Acquisition, Shell and Montedison shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Acquisition. Shell and Montedison also waive all rights to contest the validity of this Agreement.

13. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to Montedison, Shell, Polyco or Montell made to its principal office, Montedison, Shell, Polyco and Montell shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of Montedison or Shell and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Montedison, Shell, Polyco or Montell relating to compliance with this Agreement; and

b. Upon ten (10) days notice to Montedison, Shell, Polyco or Montell and without restraint or interference from it, to interview officers or

employees of Montedison, Shell, Polyco or Montell who may have counsel present, regarding any such matters.

14. This Agreement shall not be binding on the Commission until it is approved by the Commission.

Analysis To Aid Public Comment on the Provisionally Accepted Consent Order

The Federal Trade Commission (''the Commission'') has accepted, for public comment, an agreement containing a proposed Consent Order from Montedison S.p.A. and Himont Incorporated (collectively ''Montedison'') and Royal Dutch Petroleum Company, The ''Shell'' Transport and Trading Company, p.l.c., and Shell Oil Company (collectively ''Shell''). The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments from interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed Order.

The Commission's proposed complaint alleges that on or about December 30, 1993, Montedison and Shell entered into an agreement to form and acquire equal interests in a joint venture, designated by Montedison and Shell as ''Montell'' and valued at over six billion dollars, that would merge the majority of Shell's and Montedison's worldwide polyolefins businesses. Shell would retain outside the proposed joint venture polypropylene assets of Shell Oil Company (''Shell Oil''), including Shell Oil's polypropylene catalyst and polypropylene resin production facilities, Shell Oil's rights and obligations under a 1983 Cooperative Undertaking Agreement with Union Carbide Corporation (''Union Carbide''), pursuant to which Shell Oil and Union Carbide research, develop and license polypropylene technology and polypropylene catalyst worldwide, and Shell Oil's interest in the Seadrift Polypropylene Company, a partnership with Union Carbide which produces polypropylene resin. According to the complaint, Shell would nonetheless control Shell Oil as well as Montell.

The proposed complaint further states that Montedison coordinates with Mitsui Petrochemical Industries Ltd. (''Mitsui'') in licensing of polypropylene technology and in the sale of polypropylene catalysts and shares with Mitsui royalties from licensing of polypropylene technology and catalyst technology and profits from the sale of polypropylene catalysts manufactured in the United States for sale to licensees in the Western Hemisphere.

The proposed complaint alleges that the joint venture agreement between Montedison and Shell violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; the proposed joint venture between Montedison and Shell, would, if consummated, violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act in the world markets for polypropylene technology, licensing of polypropylene technology and the licensing, production and sale of polypropylene catalysts, and in the United States and Canada markets for the production and sale of polypropylene impact copolymer resin; the proposed joint venture would have an adverse effect on U.S. export trade in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and the agreement between Montedison and Mitsui violates Section 5 of the Federal Trade Commission Act.

According to the proposed complaint, polypropylene technology and catalyst technology are essential for entry into the production of polypropylene resin, and polypropylene catalysts are essential inputs in the production of polypropylene resin. Polypropylene resin is a thermoplastic with distinct price/performance characteristics and physical properties and relatively low cost and low density. Polypropylene impact copolymer resin is a type of polypropylene resin with high impact strength suitable for low temperature applications and produced through copolymerization, in a second reactor, of polypropylene and ethylene or other olefin monomers.

As alleged in the proposed complaint, Montedison, through Himont, is the leading competitor in each of the relevant markets. Shell is the second largest producer of polypropylene catalyst, polypropylene resin and impact copolymer polypropylene resin in the world, is a leader in catalyst technology, and is a significant competitor in the manufacture and sale of polypropylene resin and polypropylene impact copolymer resin in the United States and Canada. Shell Oil and Union Carbide under the Cooperative Undertaking Agreement are the principal competitor to Montedison in research, development and licensing of polypropylene technology and catalyst technology. Other technologies are not a significant competitive constraint according to the complaint.

The purpose of the divestiture is to ensure continuation of the divested assets as an ongoing, viable business engaged, in competition with Montedison and Montell and with other companies, in the research, development and licensing of polypropylene technology and catalyst technology and in the manufacture and sale of polypropylene catalysts and polypropylene resin including polypropylene impact copolymer resin, and to remedy any lessening of competition in the relevant markets resulting from the joint venture. The proposed Consent Order provides for accelerated divestiture. However, if Union Carbide declines to acquire the assets to be divested by Shell Oil, at fair market value as determined by an independent appraisal or as otherwise agreed by Shell Oil and Union Carbide, or Union Carbide objects to another acquirer approved by the Commission, the divestiture period may be extended to March 31, 1997. If Shell Oil fails to complete the required divestitures within the required period, the Commission may appoint a trustee to divest the assets required to be divested together with ancillary assets and businesses and arrangements necessary to assure the marketability of the divested assets and to assure that they are viable and competitive in the relevant markets. Any proposed divestiture pursuant to the Order must be approved by the Commission after the divestiture proposal has been placed on the public record for reception of comments from interested persons.

In addition, the proposed Consent Order would prohibit Montedison and Montell from sharing in royalties from licenses granted by Mitsui after the Order becomes final for use of polypropylene technology and catalyst technology in the United States or from entering into agreements with Mitsui for sharing of licensing royalties in the United States and would prohibit Montedison, Shell and Montell from entering into agreements to allocate markets for licensing of polypropylene technology and catalyst technology or for manufacture and sale of polypropylene catalysts.

A hold separate agreement executed as part of the Consent prohibits Shell and Montedison from transferring assets to Montell until March 1, 1995, and until Shell has completed the required divestiture, requires Shell to preserve and hold separate from Shell and Montell the assets required to be divested and requires Montedison to preserve, and hold separate from Shell and Montell, assets related to Montedison's polypropylene technology and polypropylene catalyst businesses.

For a period of ten years from its effective date, the Order would also prohibit Shell, Montedison and Montell from acquiring, without prior Commission approval, stock or other interest in any company engaged in, or assets used for, the research and development, manufacture for sale, or sale or licensing of polypropylene technology, catalyst technology or polypropylene catalyst anywhere in the world or the manufacture or sale of polypropylene polymers in the United States or Canada.

The purpose of this analysis is to invite public comment concerning the Consent Order and any other aspect of the joint venture or Montedison license agreements. This analysis is not intended to constitute an official interpretation of the Consent Agreement and Order or to modify its terms in any way.

Donald S. Clark,

Secretary.

[FR Doc. 95–2061 Filed 1–26–95; 8:45 am]

BILLING CODE 6750–01–M

[File No. 941 0126]

Sensormatic Electronics Corporation; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, Sensormatic Electronics Corporation, a Florida-based manufacturer of electronic-article surveillance systems from acquiring patents and other exclusive rights for manufacturer installed disposable anti-shoplifting labels from Knogo Corporation. In addition, the consent agreement would require Sensormatic, for ten years, to obtain Commission approval before acquiring certain rights in connection with Knogo's SuperStrip, or any significant acquisition of entities engaged in, or assets used for, the research, development or manufacture of disposable labels, or acquisitions of patents or other intellectual property for such purposes.

DATES: Comments must be received on or before March 28, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Ann Malester, Arthur Strong or Melissa Heydenreich, FTC/S–2224, Washington, DC 20580. (202) 326–2682, 326–3478 or 326–2543.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii).

Agreement Containing Consent Order

The Federal Trade Commission (''Commission''), having initiated an investigation of the proposed acquisition by Sensormatic Electronics Corporation (''Sensormatic'') of certain assets of the Knogo Corporation (''Knogo''), and it now appearing that Sensormatic, hereinafter sometimes referred to as ''proposed respondent,'' is willing to enter into an agreement containing consent order to cease and desist from making certain acquisitions, and providing for other relief:

It is hereby agreed by and between Sensormatic, by its duly authorized officer and its attorney, and counsel for the Commission that:

1. Proposed respondent Sensormatic is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its offices and principal place of business located at 500 NW. 12th Avenue, Deerfield Beach, Florida 33442.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceedings unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) Issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. Proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that, as used in this order, the following definitions shall apply:

A. ''Respondent'' or ''Sensormatic'' means Sensormatic Electronics Corporation, its predecessors, subsidiaries, divisions, and groups and affiliates controlled by Sensormatic Electronics Corporation, their directors, officers, employees, agents, and representatives, and their successors and assigns.

B. ''Knogo'' means Knogo Corporation, its predecessors, subsidiaries, divisions, and groups and affiliates controlled by Knogo, their directors, officers, employees, agents, and representatives, and their successors and assigns.

C. ''KNA'' means Knogo North America, Inc., the successor corporation to Knogo Corporation's business and assets in the United States and Canada to be formed pursuant to the Contribution and Divestiture Agreement between Knogo Corporation and Knogo North America, Inc., its subsidiaries, divisions, and groups and affiliates controlled by Knogo North America, Inc., their directors, officers, employees, agents, and representatives, and their successors and assigns.

D. ''Commission'' means the Federal Trade Commission.

E. ''Acquisition'' means the transaction described in the Agreement and Plan of Merger among Sensormatic, Knogo, and KNA, dated August 14, 1994.

F. ''Hard goods EAS systems'' means electronic article surveillance systems and components designed principally to protect against shoplifting of hard goods merchandise (*e.g.*, books, audio recordings, health and beauty aids, groceries, and home center merchandise), by means of electronic hardware capable of detecting disposable labels attached to such merchandise, whether the systems or components generate, detect, or employ radio frequency, electromagnetic, microwave, acoustic magnetic, or other electronic signals. Such systems and components may include electronic signal transmitters and receivers, signal processing equipment, computer software, label activation equipment, label deactivators, automatic and manual label applicators, and other related devices.

G. ''Disposable labels'' means labels that can be affixed to or embedded in retail merchandise and used in conjunction with hard goods EAS systems.

H. ''Source labelling'' means the process by which manufacturers, packagers, or independent wholesalers apply disposable labels to retail merchandise or its packaging.

I. ''SuperStrip'' means:

1. The material, described in Exhibit A attached hereto and made a part hereof, used or intended for use in disposable labels; and

2. Disposable labels incorporating such material.

J. ''SuperStrip Technology'' means all existing patents, inventions, trade secrets, know-how, concepts, designs, technical information, processes, and intellectual property relating to the design, manufacture, or use of SuperStrip.

K. ''SuperStrip Improvements'' means all improvements. modifications, developments, revisions, or enhancements of SuperStrip or SuperStrip Technology, whether or not covered by a patent or otherwise protected against disclosure or unauthorized use by law.

L. ''Supply Agreement'' means Exhibit B to the Contribution and Divestiture Agreement, attached as Exhibit C to the Agreement and Plan of Merger among Sensormatic, Knogo, and KNA, dated August 14, 1994, that requires Sensormatic to purchase products and materials for hard goods EAS systems from KNA upon the terms and conditions set forth therein.

M. ''United States'' means the fifty states, the District of Columbia, and Puerto Rico.

II

It is further ordered that:

A. As of the date this order becomes final, respondent shall not hold, possess, receive, or otherwise obtain, or have held, possessed, received, or otherwise obtained, the SuperStrip Technology from Knogo or KNA. Provided, however, that no provision of this Order shall prohibit an acquisition by respondent from Knogo or KNA of: (1) a non-exclusive license of the SuperStrip Technology to practice and use SuperStrip and SuperStrip Technology in the United States and Canada; and (2) ownership of, or other exclusive or non-exclusive legal or equitable rights to practice and use, SuperStrip, SuperStrip Technology, and SuperStrip Improvements outside of the United States and Canada.

B. Respondent shall comply with the terms and conditions of the Supply Agreement.

III

It is further ordered that, for a period of ten (10) years from the date this order becomes final, respondent shall not, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any legal or equitable rights to practice and use SuperStrip, SuperStrip Technology, or SuperStrip Improvements in the United States and Canada other than: (1) Rights to manufacture in the United States for export only; or (2) a non-exclusive license that is also offered to other manufacturers of hard goods EAS systems or disposable labels in connection with adoption of a retail segment standard;

B. Acquire any stock, share capital, equity or other interest in any person or concern, corporate or non-corporate, engaged at the time of such acquisition in, or within the two (2) years preceding such acquisition engaged in, the research, development, or manufacture of disposable labels designed or used for source labelling; provided, however, that individual employees or directors of respondent and each pension, benefit, or welfare plan or trust controlled by respondent may acquire, for investment purposes only, an interest of not more than one (1) percent of the stock or share capital of such person or concern; or

C. Acquire any patents, intellectual property, or other tangible or intangible assets, other than a non-exclusive license, used in or previously used in (and still suitable for use in) the research, development, or manufacture of disposable labels designed or used for source labelling.

Provided, however, that an acquisition pursuant to Paragraph III.B. or III.C. shall be exempt from the prior approval requirements of this Paragraph III if: (1) The stock, share capital, equity, or assets are acquired from a person or concern that had less than $2 million in annual sales in the United States of disposable labels in either of the two (2) most recent calendar years preceding such acquisition; (2) the acquisition is of assets relating solely to the manufacture of, improvements of, or accessories to Sensormatic products that are in existence as of the time of the acquisition; (3) the acquisition is of assets from or an interest in a joint venture in which respondent is one participant and in which no other joint venture participant was at the time of the commencement of the venture engaged in the research, development, or manufacture of disposable labels in the United States; (4) the acquisition is of rights or other assets to be used solely in commercial or industrial (i.e., non-retail) applications; or (5) the

acquisition is of rights or other assets (other than United States or Canadian marketing rights to patents, trade secrets and other intellectual property) to be used solely for products sold outside the United States and Canada.

IV

It is further ordered that within sixty (60) days after the date this order becomes final, one year (1) from the date this order becomes final, and annually for the next nine (9) years on the anniversary of the date this order becomes final, and at such other times as the Commission may require, respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with this order.

V

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the order.

VI

It is further ordered that, for the purpose of determining or securing compliance with this order, subject to any legally recognized privilege and upon written request with reasonable notice, respondent shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent relating to any matters contained in this order; and

B. Upon five (5) days' notice to respondent and without restraint or interference from it, to interview officers, directors, or employees of respondent, who may have counsel present regarding such matters.

Exhibit A—SuperStrip Material

SuperStrip I

SuperStrip I is covered by Patent numbers 5,029,291 (docket number 85.151) and 5,304,987 (docket number 85.168) and one invention disclosure (as described in docket number 85.184). These patents and disclosure describe a new type of oxidized magnetic material with an asymmetrical hysteresis curve and the ability to become magnetically deactivated. SuperStrip I material is produced by a process, as described in Knogo's patent, that involves the cutting of amorphous magnetic material into short, tag-length segments and annealing these segments for several hours in the presence of a magnetic field.

SuperStrip II

SuperStrip II is a modified version of Knogo's standard magnetic tag. Short deactivation segments are electroplated onto the soft part of the magnetic strip in a continuous process instead of being mechanically cut and adhered to the strip. A U.S. patent application (docket number 85.180) filed by Knogo is pending with respect to this process.

SuperStrip III

SuperStrip III, which is the subject of a pending U.S. patent application (docket #85.191) filed by Knogo is a recent development involving the melt-spin casting of a specially formulated amorphous magnetic material in such a way as to produce a unique hysteresis curve in a manner similar to that of SuperStrip I, but without the use of any additional processing steps beyond casting the material.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an agreement containing a proposed Consent Order from Sensormatic Electronics Corporation (''Sensormatic''), which prohibits Sensormatic from acquiring certain patents from Knogo Corporation (''Knogo'') for the practice and use of SuperStrip technology (''SuperStrip'') in the United States and Canada.

The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed Order.

On August 14, 1994, Sensormatic and Knogo entered into an agreement whereby Sensormatic agreed to acquire through a merger all of Knogo's assets outside of North America, along with patents related to SuperStrip; the agreement also obligated Sensormatic and Knogo North America, Inc. (''Knogo/NA''), a successor corporation to Knogo's business and assets in the United States and Canada, to grant royalty-free cross-licenses to one another for any improvements to patents or trade secrets related to SuperStrip (''SuperStrip Improvements''). The proposed complaint alleges that the proposed acquisition, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, in the market for the research and development of disposable labels developed or used for source labelling and the research and development of processes to manufacture disposable labels in the United States and Canada.

Knogo has been developing SuperStrip for possible use as a disposable source label with electronic article surveillance systems, which are installed in retail stores as theft prevention devices. Disposable source labels would be imbedded in goods or packaging at the manufacturing or distribution level, and they would obviate the need for retailers to install labels themselves. Sensormatic has been developing one of its proprietary technologies for potential use as a source label.

The proposed Consent Order would remedy the alleged violation by prohibiting Sensormatic from acquiring the SuperStrip patents and intellectual property in the United States and Canada. The proposed order allows Sensormatic to acquire a non-exclusive license to use the technology for products manufactured or sold in the United States and Canada, and it allows Sensormatic to acquire exclusive rights to such technology outside the United States and Canada. Finally, the proposed Consent Order would require Sensormatic to comply with the terms and conditions of a supply agreement between Sensormatic and Knogo/NA

The proposed Order will also prohibit Sensormatic, for a period of ten (10) years, from acquiring, without Federal Trade Commission approval, other legal or equitable rights to use the SuperStrip technology or SuperStrip Improvements, any stock in any concern engaged in the research, development, or manufacture of disposable labels designed or used for source labelling, or any patents or other intellectual property used in the research, development, or manufacture of disposable labels designed or used for source labelling. The prior approval provisions contain several provisos, which exempt certain acquisitions from the prior approval requirements.

Under the provisions of the Consent Order, Sensormatic is also required to provide to the Commission a report of its compliance with the Order within

sixty (60) days after the date this Order becomes final, one (1) year from the date this order becomes final, and annually thereafter for the next nine (9) years. The Consent Order also requires Sensormatic to notify the Commission at least thirty (30) days prior to any change in the structure of Sensormatic resulting in the emergence of a successor.

The purpose of this analysis is to facilitate public comment on the proposed Order, and it is not intended to constitute an official interpretation of the agreement and proposed Order or to modify in any way their terms.

Donal S. Clark,

Secretary.

Statement of Commissioner Mary L. Azcuenaga Concurring in Part and Dissenting in Part in Sensormatic Electronics Corp., File No. 941–0126

Today the Commission accepts for public comments a consent order that would settle allegations that Sensormatic Electronics Corporation's acquisition of Knogo Corporation's patents related to SuperStrip and the agreement to cross-license improvements to SuperStrip violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act. I find reason to believe the transaction violates the law and concur in accepting the consent order for publication. I dissent, however, from the allegations in the complaint defining the relevant market and from paragraph II(B) of the order, which requires that Sensormatic adhere to a private supply contract.

Sensormatic and Knogo produce and sell electronic article surveillance (EAS) systems and components, used by retailers to protect against shoplifting. EAS systems provide a warning when a special label attached to merchandise by the retailer triggers an electronic signal on hardware located at the store's exit unless the label has been neutralized by store employees at the time of sale. Because Sensormatic proposes to acquire only those assets of Knogo located outside North America, the competitive analysis of the transaction does not focus on the production and sale of existing EAS systems and labels to retailers in the United States and Canada.

Sensormatic, Knogo, and other firms, however, are also engaged in research and development to perfect a new ''source labelling'' system. In such a system, manufacturers would apply the EAS label to the merchandise or its packaging, which would eliminate the need for retailers manually to affix a label to each protected item of merchandise. No source labelling system is currently in use, but Knogo has developed and patented SuperStrip technology for use in labels, potentially including source labels, and other firms are developing their own source labelling technologies.

I concur that the relevant market involves competition in research and development, but question the market definition in paragraph 11 of the complaint, which is narrowly limited to the research and development of ''disposable labels developed or used for source labelling'' and processes to make them. In a Section 7 case, the Commission has the burden of proving the relevant product market, and distinguishing research and development of source labelling from other improvements in EAS systems may be difficult or impossible. I would not limit the product market to research and development in source labelling but would define the market as research and development in EAS systems and components, including source labelling.

I also dissent from paragraph 12 of the complaint, which limits the geographic market to the United States and Canada. Successful research and development yields intellectual property that can move freely across international boundaries. A foreign firm can license intellectual property without establishing a manufacturing or sales presence in the United States. Limiting the geographic market to the United States and Canada excludes from the market the potentially important research activity of at least one European firm. Even if domestic firms are familiar with particular technologies and have a sizable base of equipment already installed in retail stores, research and development may yield an improvement significant enough to overcome the advantages of current market leaders. The market should not be so narrowly defined as to presume that only North American firms could effect a significant breakthrough that might alter the current competitive balance.

Applying Section 7 analysis to the products and geographic markets as I would define them, I find reason to believe the transaction would violate the law. The proposed acquisition would significantly increase the concentration in the already highly concentrated world market for EAS system research and development. The proposed transaction, the transfer of patents from Knogo to Sensormatic and the agreement to grant royalty-free cross licenses on any improvements to SuperStrip, likely would diminish competition in research and development of new EAS systems and components. Accordingly, I concur in paragraph II(A) of the order.

Finally, I dissent from paragraph II(B) of the order, which provides that Sensormatic ''shall comply with the terms and conditions'' of a supply agreement between Sensormatic and Knogo North America, Inc., the successor corporation to Knogo's North American business. The supply agreement is a long, highly detailed commercial contract that was negotiated as part of the acquisition in question. The complaint contains no allegations establishing a relationship between this contract and the state of competition in any antitrust market. Absent a demonstrable link between the contract and competition, the contract provides no basis for liability and compliance with the contract does not appear necessary to effect relief.

[FR Doc. 95–2062 Filed 1–26–95; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 94M–0414]

Pilkington Barnes Hind USA; Premarket Approval of Precision UV™ (Vasurfilcon A) Hydrophilic Contact Lens for Extended Wear

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Pilkington Barnes Hind, USA, Sunnyvale, CA, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the Precision UV™ (vasurfilcon A) Hydrophilic Contact Lens for extended wear. The device is to be manufactured under an agreement with Allergan Medical Optics, Irvine, CA, which has authorized Pilkington Barnes Hind, USA to incorporate information contained in its approved premarket approval application (PMA) for the lidofilcon B nonultraviolet absorbing lens material and all related supplements that lead to the approval of the vasurfilcon A material. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of September 30, 1994, of the approval of the application.

DATES: Petitions for administrative review by February 27, 1995.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James F. Saviola, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1744.

SUPPLEMENTARY INFORMATION: On August 12, 1994, Pilkington Barnes Hind, USA, Sunnyvale, CA 94086–5200, submitted to CDRH an application for premarket approval of the Precision UV™ (vasurfilcon A) Hydrophilic Contact Lens for extended wear. The device is a spherical soft (hydrophilic) contact lens and is indicated for nonaphakic daily or extended wear from 1 to 7 days between removals for cleaning, rinsing, and disinfecting, as recommended by the eye care practitioner. Candidates to use the Precision UV™ Hydrophilic Contact Lens include persons who are nearsighted (myopic) and farsighted (hyperopic) and who may have astigmatism of 2.0 diopters or less that does not interfere with visual acuity.

The application includes authorization from Allergan Medical Optics, Irvine, CA, 92713–9534, to incorporate information contained in its approved PMA for lidofilcon B nonabsorbing ultraviolet lens material and all related supplements that lead to the approval of the vasurfilcon A material.

In the **Federal Register** of March 4, 1994 (59 FR 10397), CDRH published an order which reclassified daily wear soft and daily wear nonhydrophilic plastic contact lenses from class III (premarket approval) into class II (special controls). CDRH notes that the daily wear indication for this lens has received marketing clearance as a class II device through the premarket notification (510(k)) procedures.

In accordance with the provisions of section 515(c)(2) of the act as amended by the Safe Medical Devices Act of 1990, this PMA was not referred to the Ophthalmic Devices Panel, an FDA advisory panel, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel. On September 30, 1994, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before February 27, 1995, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: January 11, 1995.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 95–2112 Filed 1–26–95; 8:45 am]

BILLING CODE 4160–01–F

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, January 6, 1995.

(Call PHS Reports Clearance Officer on 202–690–7100 for copies of request)

1. Registration of Cosmetic Product Establishment—0910–0027 (Extension, no change)—The voluntary registration of cosmetic manufacturers and repackers supplies the Food and Drug Administration (FDA) with current locations for on-site inspections, addresses for information and regulatory mailings, business trading names supplying product distribution sources, and aids FDA in responding to FOI requests. Respondents: Business or other for-profit; Number of Respondents: 50; Number of Responses per Respondent: 1; Average Burden per Response: 0.4 hour; Estimated Annual Burden: 20 hours.

2. Progress Toward Eliminating Occupational Lead Poisoning: Survey on the Use of Lead in Industry and Control of Occupational Lead Exposure in Ohio—New—This suvey will examine the types of lead-using companies doing environmental and/or biological monitoring. The results will be used to target the technical assistance resources of the National Institute of Occupational Safety and Health to those industries with uncontrolled lead exposures and those industries that should be doing monitoring and are not. Respondents: Business or other for-profit; Number of Respondents: 1,806; Number of Responses per Respondent: 1; Average Burden per Response: 3 hours; Estimated Annual Burden: 5,413 hours.

3. Small Business Innovation Research Grant Applications Phase I and Phase II and Small Business Technology Transfer Grant Applications Phase I and II—0925–0195 (Revision)—The purpose of the Small Business

Innovation Research (SBIR) Phase I and Phase II applications and the Small Business Technology Transfer (STTR) Phase I and Phase II applications is to provide a vehicle by which small business concerns can apply for available research funds. This information is used by PHS to determine those applicants scientifically and administratively qualified to receive public funds for projects relevant to PHS programs. Respondents: Business or other for-profit.

Title	Number of respondents	Number of responses per respondent	Average burden per response (hours)
SBIR and STTR phase I	3,400	1	30
SBIR and STTR phase II	600	1	40

Estimated Total Annual Burden: 126,000 hours.

4. Pesticide Residue Study (15 months) of Monthly Rice Production Volumes from Operating U.S. Rice Mills—New—As part of the Food and Drug Administration's (FDA) continuing effort to improve the pesticide program, monitoring studies are needed. Department of Agriculture inspectors, which regularly inspect mills, have obtained monthly samples from known domestic rice production mills over a 15-month period. FDA is proposing to query these domestic rice mills, which process virtually all rice milled in the U.S., to obtain information on their monthly ''pounds of finished rice produced'' between October 1993 and December 1994. FDA needs this information to determine how this sampling approach differs historically from the data obtained from the Agency's traditional sampling approach. Respondents: Business or other for-profit; Number of Respondents: 43; Number of Responses per Respondent: 1; Average Burden per Response: 1 hour; Estimated Annual Burden: 43 hours.

5. Protection of Human Subjects—Recordkeeping and Reporting Requirements Institutional Review Boards (21 CFR 56)—0910–0130 (Reinstatement)—Documentation of IRB activities and retention of those records are necessary for the Food and Drug Administration to be able to assess compliance with regulations during inspections. Respondents: Business or other for-profit, Federal Government, Not for-profit institutions; Number of Respondents: 2,000; Number of Responses per Respondent: 1; Average Burden per Response: 65 hours; Estimated Annual Burden: 131,400 hours.

6. Services Research Outcomes Study (SROS)—Main Study—0930–0167—The Service Research Outcomes Study employs a national sample of substance abuse treatment clients to gather information required in the formulation of national drug policy. A sample of 3,000 treatment clients will be followed up through records and personal interview to obtain information on drug use, criminal activity, and treatment utilization patterns. Respondents: Individuals or households; Number of Respondents: 2,295; Number of Responses per Respondent: 1; Average Burden per Response: 2.005 hours; Estimated Annual Burden: 4,602 hours.

7. Color Additive Certification, 21 CFR 80, Subpart B—0910–0216—(Extension, no change)—The information collected is required by the Food and Drug Administration for the purpose of responding to requests for ''Color Certification'' of color additives as required in Section 721 of the FD&C Act and the regulations promulgated in 21 CFR Part 80. The activity includes chemical analysis for batch composition of a representative sample to insure compliance with applicable specifications and issuance of a certification lot number. Respondents are any persons requesting certification of a manufactured batch of color additive. Respondents: Business or other for-profit.

Title	Number of respondents	Number of responses per respondent	Average burden per response (hours)
Reporting: Request for Certification—22 CFR 80.21	27	145	.216
Samples of Batch Colors—22 CFR 80.22	27	145	0.033
Recordkeeping: Records of Distribution—21 CFR 80.39	27	1	36.3

Estimated Total Annual Burden: 1,958 hours.

Written comments and recommendations concerning the proposed information collections should be sent within 30 days of this notice directly to OMB Desk Officer designated below at the following address: Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: January 23, 1995.

James Scanlon,

Director, Division of Data Policy, Office of Health Planning and Evaluation.

[FR Doc. 95–2120 Filed 1–26–95; 8:45 am]

BILLING CODE 4160–17–M

Social Security Administration

1994–95 Advisory Council on Social Security; Meeting

AGENCY: Social Security Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice announces a meeting of the 1994–95 Advisory Council on Social Security (the Council).

DATES: Friday, February 10, 1995, 8:30 a.m. to 5 p.m. and Saturday, February 11, 1995, 9 a.m. to 12 noon.

ADDRESSES: The Sheraton City Centre, 1143 New Hampshire Avenue, NW., Washington, DC 20037, (202) 775–0800.

FOR FURTHER INFORMATION CONTACT: By mail—Dan Wartonick, 1994 Advisory Council on Social Security, Room 624D, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; By telephone—(202) 205–4861; By telefax—(202) 205–4879.

SUPPLEMENTARY INFORMATION:

I. Purpose

Under section 706 of the Social Security Act (the Act), the Secretary of Health and Human Services (the Secretary) appoints the Council every 4 years. The Council examines issues affecting the Social Security Old-Age, Survivors, and Disability Insurance (OASDI) programs, as well as the Medicare program and impacts on the Medicaid program, which were created under the Act.

In addition, the Secretary has asked the Council specifically to address the following:

- Social Security financing issues, including developing recommendations for improving the long-range financial status of the OASDI programs;
- General program issues such as the relative equity and adequacy of Social Security benefits for persons at various income levels, in various family situations, and various age cohorts, taking into account such factors as the

increased labor force participation of women, lower marriage rates, increased likelihood of divorce, and higher poverty rates of aged women.

In addressing these topics, the Secretary suggested that the Council may wish to analyze the relative roles of the public and private sectors in providing retirement income, how policies in both sectors affect retirement decisions and the economic status of the elderly, and how the disability insurance program provisions and the availability of health insurance and health care costs affect such matters.

The Council is composed of 12 members in addition to the chairman: Robert Ball, Joan Bok, Ann Combs, Edith Fierst, Gloria Johnson, Thomas Jones, George Kourpias, Sylvester Schieber, Gerald Shea, Marc Twinney, Fidel Vargas, and Carolyn Weaver. The chairman is Edward Gramlich.

The Council met previously on June 24–25 (59 FR 30367), July 29, 1994 (59 FR 35942), September 29–30 (59 FR 47146), October 21–22 (59 FR 51451), November 18–19 (59 FR 55272), and January 27 (60 FR 3416).

II. Agenda

The following topics will be presented and discussed:

- Adequacy and Equity Options for the Social Security Program;
- Discussion on Trust Fund Investment/Budget Treatment Options; and
- Trends in the relationship of morbidity and mortality.

The meeting is open to the public to the extent that space is available. Interpreter services for persons with hearing impairments will be provided. A transcript of the meeting will be available to the public on an at-cost-of duplication basis. The transcript can be ordered from the Executive Director of the Council.

(Catalog of Federal Domestic Assistance Program Nos. 93.802, Social Security-Disability Insurance; 93.803, Social Security-Retirement Insurance; 93.805, Social Security-Survivors Insurance.)

Dated: January 20, 1995.

David C. Lindeman,

Executive Director, 1994–95 Advisory Council on Social Security.

[FR Doc. 95–2041 Filed 1–26–95; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–95–1917; FR–3778–N–21]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATES: January 27, 1995.

ADDRESSES: For further information, contact William Molster, Department of Housing and Urban Development, Room 7254, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: January 20, 1995.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 95–2076 Filed 1–26–95; 8:45 am]

BILLING CODE 4210–29–M

[Docket No. N–95–3862; FR–3846–N–02]

Notice of Funding Availability for Fiscal Year 1995 for Innovative Project Funding Under the Innovative Homeless Initiatives Demonstration Program; Notice of Extension of Deadline for Applications

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding availability (NOFA); Extension of deadline for applications.

SUMMARY: On January 25, 1995 (60 FR 4996), the Department published in the **Federal Register**, a Notice that announced the availability of $25 million in funds for applications for Innovative Project Funding under the Innovative Homeless Initiatives Demonstration Program. These funds will be awarded competitively for innovative programs designed to provide aggressive outreach to homeless persons living on the streets or in other places not designed for, or ordinarily used as, regular sleeping accommodations for human beings; provide intensive needs assessments; connect these people with existing community resources when available; and, if necessary, provide additional housing and services for them.

For reasons set forth in the January 25, 1995 NOFA, and reiterated in this notice, there is a short application period for this funding. The January 25, 1995 NOFA provided for an application deadline of February 6, 1995. The Department, however, had intended to provide for an application deadline of February 13, 1995. Accordingly, the purpose of this notice is to extend the application due date until 6 p.m. local time on February 13, 1995. (See the January 25, 1995 published NOFA for all additional requirements.)

DEADLINE DATES: All applications received at HUD Headquarters, Office of Community Planning and Development, at the address shown in the ''Addresses'' section of this NOFA by 6 p.m. local time on February 13, 1995 will be considered for funding. HUD will treat as ineligible for consideration applications that are received after the deadline. However, any application received at that address within 24 hours after the deadline will be considered for funding if the applicant can show there were circumstances beyond its control that delayed delivery of the application, such as the failure of a delivery service to deliver the application on or before the specified date. *Applications may not be sent by facsimile (FAX).*

The Department has established a short application period for this NOFA in an effort to make funding quickly available to applicants who are in need of funding to assist homeless persons, especially during this time when harsh weather conditions necessitate greater and more immediate assistance to homeless persons.

ADDRESSES: A completed application must be submitted to the following address: Processing and Control Unit,

Room 7255, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, Attention: Homeless Innovative Funding.

One copy of the application must also be sent to the HUD Field Office serving the area in which the applicant's project is located. A list of Field Offices appears in Appendix C to the NOFA, which was published on January 25, 1995. The Field Office copy must be received by the application deadline as well, but a determination that an application was received on time will be made solely on receipt of the application at the Office of Community Planning and Development in Headquarters, Washington, DC.

FOR FURTHER INFORMATION CONTACT: The HUD Field Office for the area in which the proposed project is located. Telephone numbers are included in the list of Field Offices set forth in Appendix C to the NOFA, published on January 25, 1995.

SUPPLEMENTARY INFORMATION: Accordingly, the deadline date for receipt of applications for the Notice of Funding Availability for Fiscal Year 1995 for Innovative Project Funding under the Innovative Homeless Initiatives Demonstration Program (NOFA), published in the **Federal Register** on January 25, 1995 (60 FR 4996), is extended to February 13, 1995.

Dated: January 25, 1995.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 95–2220 Filed 1–25–95; 1:28 pm]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of Draft Conservation Agreement for the Virgin Spinedace for Review and Comment

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The Fish and Wildlife Service (Service) announces the availability for public review of a Draft Conservation Agreement for the Virgin spinedace (*Lepidomeda mollispinis mollispinis*). This species is proposed for Federal listing as threatened pursuant to the Endangered Species Act (Act) of 1973, as amended. The Conservation Agreement was developed by the Utah Department of Natural Resources, with participation from the following parties—Bureau of Land Management, National Park Service, Nevada Department of Conservation and Natural Resources, Arizona Game and Fish Department, Washington County Water Conservancy District, and the Service. The agreement focuses on reducing and eliminating significant threats and enhancing and/or stabilizing specific reaches of occupied and unoccupied historical habitat of the Virgin spinedace. The Service solicits review and comment from the public on this draft agreement.

DATES: Comments on the Draft Conservation Agreement must be received on or before March 28, 1995 to be considered by the Service during preparation of the final conservation agreement and prior to the Service's determination whether it will be a signatory party to the agreement.

ADDRESSES: Persons wishing to review the Draft Conservation Agreement may obtain a copy by contacting the Field Supervisor, U.S. Fish and Wildlife Service, 145 East 1300 South, Suite 404, Salt Lake City, Utah 84115. Written comments and materials regarding the Draft Conservation Agreement should also be directed to the same address. Comments and materials received will be available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Roberts D. Williams, Assistant Field Supervisor (see **ADDRESSES** section) (telephone 801/524–5001).

SUPPLEMENTARY INFORMATION:

Background

The Virgin spinedace is a small minnow endemic to the Virgin River drainage basin in southwestern Utah, northwestern Arizona, and southeastern Nevada. Over the last 50 years, the range of the species has declined by approximately 37–40 percent due to human impacts such as water development projects, agriculture, mining, urbanization, and introduction of nonactive fishes. The Virgin spinedace was proposed for listing as a threatened species on May 18, 1994 (59 FR 25875). In May 1994 the Utah Department of Natural Resources initiated development of a Conservation Agreement, working cooperatively with other agencies, in an effort to reduce the threats affecting the Virgin spinedace.

The Conservation Agreement outlines five general management actions and four general administrative actions required to meet the objectives of the agreement. These actions include reestablishing and maintaining required flows, enhancing and maintaining habitat, selectively controlling nonnative fish, maintaining genetic viability, monitoring populations and habitat, coordinating conservation activities, implementing the conservation schedule, funding conservation actions, and assessing conservation progress.

Public Comments Solicited

The Service will use information received in its determination as to whether it should be a signatory party to the agreement. Comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this draft document are hereby solicited. All comments and materials received will be considered prior to the approval of any final document.

Author

The primary author of this notice is Janet Mizzi (see **ADDRESSES** section) (telephone 801/524–5001).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the Fish and Wildlife Act of 1956, the Fish and Wildlife Service Coordination Act of 1964, and the National Memorandum of Understanding (94(SMU–058)).

Dated: January 23, 1995.

Ralph O. Morgenweck,

Regional Director.

[FR Doc. 95–2080 Filed 1–26–95; 8:45 am]

BILLING CODE 4310–55–M

INTERSTATE COMMERCE COMMISSION

Notice of Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: American Brands, Inc., 1700 East Putnam Avenue, Old Greenwich, Connecticut 06870–0811.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(I) ACCO World Corporation—Delaware
(II) Polyblend Corporation—Illinois
(III) Vogel Peterson Furniture Company—Delaware

(IV) ACCO USA, Inc.—Delaware
(V) Day-Timers, Inc.—Delaware
(VI) Sax Arts and Crafts, Inc.—Delaware
(VII) Kensington Microware Limited—Delaware
(VIII) MasterBrand Industries, Inc.—Delaware
(IX) Moen Incorporated—Delaware
(X) 21st Century Companies, Inc.—Delaware

Vernon A. Williams,

Secretary.

[FR Doc. 95–2067 Filed 1–26–95; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–55 (Sub-No. 495X)]

CSX Transportation, Inc.—Abandonment and Discontinuance Exemption—in Lawrence County, IN

CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 6.7-mile line of railroad extending between milepost Q–245.0, at Bedford, and milepost Q–251.7, near Mitchell, in Lawrence County, IN. A notice of exemption was served and published in the **Federal Register** on October 5, 1994 (59 FR 50771).

CSXT certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no CSXT overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

The Brotherhood of Locomotive Engineers filed a request to revoke CSXT's exemption on November 28, 1994, alleging that the notice contained false or misleading information. CSXT's verified notice of exemption was properly filed. However, the notice served and published on October 5, 1994, contained a ministerial error and is amended by this new notice and **Federal Register** publication.

Because of trackage rights held by Soo Line Railroad Company's (SLR), CSXT may only discontinue service at this time. The effectiveness of this notice as to the abandonment will be contingent upon: (1) SLR's obtaining Commission approval or exemption to discontinue its trackage rights; and (2) CSXT informing any party requesting public use or trail use if and when such trackage rights are discontinued. *See Missouri Pac. R. Co.—Aban.—Osage & Morris Count. KS,* 9 I.C.C.2d 1228 (1993). Requests for public use or trail use conditions will not be acted upon until SLR has relinquished its trackage rights.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, 500 Water St., J150, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio.*

CSXT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) issued an environmental assessment (EA) on by October 13, 1994 finding that abandonment of the line will not significantly affect the quality of the human environment. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: January 23, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–2068 Filed 1–26–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 96–94]

Privacy Act of 1974 as Amended by the Computer Matching and Privacy Protection Act of 1988

This notice is published in the **Federal Register** in accordance with the requirements of the Privacy Act, as amended by the Computer Matching and Privacy Protection Act of 1988 (CMPPA) (5 U.S.C. 552a(e)(12). The Immigration and Naturalization Service (INS), Department of Justice (the source agency), is participating in computer matching programs with the District of Columbia and agencies of five states (all designated as recipient agencies). These matching activities will permit the recipient agencies to confirm the immigration status of alien applicants for, or recipients of, Federal benefits assistance under the ''Systematic Alien Verification for Entitlements (SAVE)'' program as required by the Immigration Reform and Control Act (IRCA) of 1986 (Pub. L. 99–603). Specifically, the matching activities will permit the following eligibility determinations:

(1) The District of Columbia Department of Employment Services; the New York Department of Labor; and the Texas Employment Commission will be able to determine eligibility status for unemployment compensation.

(2) The California State Department of Social Services will be able to determine eligibility status for the Aid to Families with Dependent Children (AFDC) Program, and the Food Stamps Program.

(3) The Colorado Department of Social Services will be able to determine the eligibility status for the Medicaid Program, the AFDC Program, and the Food Stamps Program.

(4) The New Jersey Department of Labor will be able to determine eligibility status for unemployment compensation.

(5) The California State Department of Health Services will be able to determine eligibility status for the Medicaid Program.

Section 121(c) of IRCA amends section 1137 of the Social Security Act and requires agencies which administer the Federal benefit programs designated within IRCA to use the INS verification system to determine eligibility. Accordingly, through the use of user identification codes and passwords, authorized persons from these agencies may electronically access the data base of an INS system of records entitled ''Alien Status Verification Index, Justice/INS–009.'' From its automated records system, any agency (named above) participating in these matching programs may enter electronically into the INS data base the alien registration number of the applicant or recipient. This action will initiate a search of the INS data base for a corresponding alien registration number. Where such number is located, the agency will receive electronically from the INS data base the following data upon which to determine eligibility: Alien registration number; last name, first name; date of

birth; country of birth; social security number (if available); date of entry; immigration status data; and employment eligibility data. In accordance with 5 U.S.C. 552a(p), such agencies will provide the alien applicant with 30 days notice and an opportunity to contest any adverse finding before final action is taken against that alien because of ineligible immigration status as established through the computer match.

The original effective date of the matching programs was January 29, 1990, for which notice was published in the **Federal Register** on December 28, 1989 (54 FR 53382). The programs have continued to date under the authority of a series of new approvals as required by the CMPPA. The CMPPA provides that based upon approval by agency Data Integrity Boards of a new computer matching agreement, computer matching activities may be conducted for 18 months and, contingent upon specific conditions, may be similarly extended by the Board for an additional year without the necessity of a new agreement. The most recent one-year extension for those programs listed in items (1) through (3) above will expire on February 3, 1995, and those listed in items (4) and (5) above will expire on February 6, 1995. Therefore, the Department's Data Integrity Board has approved new agreements to permit the continuation of the above-named computer matching programs for another 18-month period from the effective date (described below).

Matching activities under the new agreements will be effective (1) 30 days after publication of a computer matching notice in the **Federal Register**, or (2) 40 days after a report concerning the computer matching programs has been transmitted to the Office of Management and Budget and transmitted to Congress along with a copy of the agreements, whichever is later. The agreements (and matching activities) will continue for 18 months from the effective date—unless within 3 months prior to the expiration of the agreement, the Data Integrity Board approves a one-year extension pursuant to 5 U.S.C. 552a(o)(2)(D).

In accordance with 5 U.S.C. 552a(o)(2)(A) and (r), the required report has been provided to the Office of Management and Budget, and to the Congress together with a copy of the agreements.

Inquiries may be addressed to Patricia E. Neely, Staff Assistant, Systems Policy Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 850, WCTR Bldg.).

Dated: January 18, 1995.

Stephen R. Colgate,

Assistant Attorney General for Administration.

[FR Doc. 95–2025 Filed 1–26–95; 8:45 am]

BILLING CODE 4410–10–M

Office of Juvenile Justice and Delinquency Prevention

[OJP (OJJDP) No. 1041]

Meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention

AGENCY: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.

ACTION: Notice of meeting.

SUPPLEMENTARY INFORMATION: A meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention will take place in the District of Columbia, beginning at 1:00 p.m. on Wednesday, February 8, 1995, and ending at 4:00 p.m. on February 8, 1995. This advisory committee, chartered as the Coordinating Council on Juvenile Justice and Delinquency Prevention, will meet at the United States Department of Justice, located at 10th and Constitution Avenue, N.W., Conference Room 5111, Washington, D.C. 20530. The Coordinating Council, established pursuant to section 3(2)(A) of the Federal Advisory Committee Act (5 U.S.C. App. 2), will meet to carry out its advisory functions under section 206 of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended. This meeting will be open to the public. The public is advised that it must enter the building via the Constitution Avenue Visitors' Center. For security reasons, members of the public who are attending the meeting must contact the Office of Juvenile Justice and Delinquency Prevention (OJJDP) by close of business February 1, 1995. The point of contact at OJJDP is Lutricia Key who can be reached at (202) 307–5911. The public is further advised that a pictured identification is required to enter the building.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 95–2085 Filed 1–26–95; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used

in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determinations Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parenteses following the decisions being modified.

Volume I

None

Volume II

None

Volume III

None

Volume IV

None

Volume V

None

Volume VI

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and Related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the county. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February which included all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weeekly updates will be distributed to subscribers.

Signed at Washington, DC this 20th day of January 1995.

Alan L. Moss,

Director, Division of Wage Determination.

[FR Doc. 95–1875 Filed 1–26–95; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

[TA–W–30,339]

DG&E/Slocum Limited Partnership; Slocum, TX and TA–W–30,339A Dallas Gas & Electric, Inc. Dallas TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to apply for Worker Adjustment Assistance on December 12, 1994, applicable to all workers of the subject firm. The certification notice will soon be published in the **Federal Register**.

At the request of the company, the Department reviewed the certification for workers of the subject firm. The sales, production and employment data for the Dallas, Texas office was included with the initial investigation; accordingly, the Dallas office met all three of the Worker Group Eligibility Requirements of the Trade Act for certification.

Therefore, the Department is amending the certification by including the Dallas, Texas location of Dallas Gas & Electric, Inc.

The amended notice applicable to TA–W–30,339 is hereby issued as follows:

All workers of DG&E/Slocum Limited Partnership, Slocum, Texas and the Dallas, Texas Office of Dallas Gas & Electric, Inc., engaged in employment related to the production of crude oil who became totally or partially separated from employment on or after September 6, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 13th day of January 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–2030 Filed 1–26–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,332]

Intera Information Technologies, Inc., Denver, CO; Notice of Affirmative Determination Regarding Application for Reconsideration

On November 15, 1994, one of the petitioners requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was issued on November 4, 1994 and published in the **Federal Register** on November 16, 1994 (59 FR 59252).

New findings show that Intera performed exploration activities and conducted testings at the well site for unaffiliated firms in the oil industry.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C., this 13th day of January 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–2031 Filed 1–26–95; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment

and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 6, 1995.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 6, 1995.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 3rd day of January, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Kane Industries (Co)	Morgantown, KY	01/03/95	12/21/94	30,611	Men's Formal Wear and Tailored Coats.
Bravo Fashions, Inc (ILGWU)	Wilkes Barre, PA	01/03/95	12/22/94	30,612	Ladies' suits.
T.A.B.C Prince Gardner (Wkrs)	Searcy, AR	01/03/95	12/14/95	30,613	Leather Billfolds.
Yocon Knitting (ACTWU)	Stowe, PA	01/03/95	12/22/94	30,614	T-Shirts and Turtlenecks.
Colonial Shoe, Inc (Wkrs)	Littlestown, PA	01/03/95	12/20/94	30,615	Shoes, Dress, Work, Casual.
Colonial Shoe, Inc (Wkrs)	Salunga, PA	01/03/95	12/20/94	30,616	Shoes, Dress, Work, Casual.
Shaw Pipe, Inc (Wkrs)	Highspire, PA	01/03/95	01/03/95	30,617	Small Steel Pipes.
Electra Sound, Inc (Wkrs)	Parma, OH	01/03/95	12/20/94	30,618	Automobile Engine Control Modules.
WARNACO, Inc (Wkrs)	Long Island City, NY	01/03/95	12/23/94	30,619	Neckties.
Woodward Governor Co-Stevens Point (Co).	Stevens Point, WI	01/03/95	12/22/94	30,620	Fuel Control Parts—Aircraft Engines.
TRW Transportation (Wkrs)	San Dimas, CA	01/03/95	12/21/94	30,621	Safety Airbags Sensors.
E.L. Heacock Co., Inc (Wkrs)	Gloversville, NY	01/03/95	12/20/94	30,622	Leather Goods.
Marilene Fashions, Inc (ILGWU)	Jersey City, NJ	01/03/95	12/16/94	30,623	Ladies' Coats and Suits.
Orbital Science Corp. (Wkr)	Pomona, CA	01/03/95	12/20/94	30,624	Cameras—Space Station.
Alascom, Inc (IBT)	Anchorage, AK	01/03/95	11/17/94	30,625	Telecommunications.
A–Tek (Co)	Brainerd, MN	01/03/95	12/21/94	30,626	Video Cassette Sub-Assemblies.
New Dimensions Ltd/Rosecraft (Wkrs).	Providence, RI	01/03/95	12/21/94	30,627	Costume Jewelry.
Artex Manufacturing Co., Inc (Wkrs)	Abilene, KS	01/03/95	12/20/94	30,628	Athletic Wear.
Artex Manufacturing Co., Inc (Wkrs)	Overland Park, KS	01/03/95	12/20/94	30,629	Athletic Wear.
Artex Manufacturing Co., Inc (Wkrs)	Boonville, MO	01/03/95	12/20/94	30,630	Athletic Wear.

[FR Doc. 95–2032 Filed 1–26–95; 8:35 am]

BILLING CODE 4510–30–M

[TA–W–30,180]

Magnetek, Huntington, IN; Notice of Revised Determination on Reconsideration

On December 16, 1994, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of the subject firm. The notice was published in the **Federal Register** on December 30, 1994 (59 FR 67735).

The initial investigation findings show that the workers producing magnetic components met all the worker group eligibility requirements for certification but the workers producing electronic ballasts did not meet criterion 3 (increased imports) of the worker group eligibility requirements.

New findings on reconsideration show production of electronic ballasts ceased at Huntington, Indiana in August, 1994 when substantial worker separations occurred. Other findings on reconsideration show increased corporate imports of electronic ballasts from Mexico in 1994.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that workers and former workers of MagneTek in Huntington, Indiana were adversely affected by increased imports of articles that are like or directly competitive with magnetic components and electronic ballasts produced at the subject plant. In accordance with the provisions of the Act, I make the following revised determination for workers of MagneTek in Huntington, Indiana.

''All workers of MagneTek in Huntington, Indiana who became totally or partially separated from employment on or after July 26, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, D.C., this 11th day of January, 1995.

Victor J. Trunzo,

Program Director, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–2033 Filed 1–26–95; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade

Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 6, 1995.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 6, 1995.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, D.C. this 9th day of January, 1995.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Melnor, Inc (Co)	Moonachie, NJ	01/09/95	12/21/94	30,631	Assembly of lawn & garden products.
IRM Co (Wkrs)	Port Arthur, TX	01/09/95	12/28/94	30,632	Maintenance/service.
Karlshamns USA, Inc (ICWU)	Kearny, NJ	01/09/95	12/21/94	30,633	Specialty fat to food industries.
Illinois Masonic Hospital (Wkrs)	Chicago, IL	01/09/95	12/22/94	30,634	Food service.
Genicom Corp (Wkrs)	Waynesboro, VA	01/09/95	12/21/94	30,635	Printers and relays.
Goebel Miniatures (Wkrs)	Camarillo, CA	01/09/95	12/31/94	30,636	Collectible figurines.
Moonlight Mushrooms, Inc (USWA)	Worthington, PA	01/09/95	11/17/94	30,637	Mushrooms.
MPI Warehouse Speciality Co (Co)	Williston, ND	01/09/95	12/19/94	30,638	Warehouses goods for oil & gas.
Exxon Pipeline Co (Wkrs)	La Porte, TX	01/09/95	12/30/94	30,639	Crude oil.
Hanel Lumber Co (Wkrs)	Hood River, OR	01/09/95	12/29/94	30,640	Logs.
Champ Serve Line (UAW)	Edwardsville, KS	01/09/95	12/19/94	30,641	Automotive parts & accessories.
Malco Microdot (Wkrs)	Montgomeryvile, PA	01/09/95	12/29/94	30,642	Electronic parts, auto parts.

[FR Doc. 95–2036 Filed 1–26–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,578]

McKay Drilling Company Aroura, CO; Operating at Other Sites in the Following States: TA–W–30, 578A North Dakota TA–W–30, 578B Wyoming; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on December 19, 1994 in response to a worker petition which was filed on December 1, 1994 on behalf of workers at Mckay Drilling Company, Incorporated, Aroura, Colorado (TA–W–30,578) and operating out of the following states: North Dakota (TA–W–30,578A) and Wyoming (TA–W–30,578B).

All workers were separated from the subject firm more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 13th day of January 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–2034 Filed 1–26–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,310 Syracuse, New York]
[TA–W–30,310A All Other Sites in New York]

Niagara Mohawk Power Corp.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 10, 1994, applicable to all workers of the subject firm. The certification was published in the **Federal Register** on December 9, 1994 (59 FR 63823).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations occurred at other locations in the state.

Accordingly, the Department is amending the certification to properly reflect the correct worker group.

The intent of the Department's certification is to include all workers of Niagara Mohawk Power Corporation who were adversely affected by increased imports of electricity.

The amended notice applicable to TA–W–30,310 is hereby issued as follows:

''All workers of Niagara Mohawk Power Corporation Syracuse, New York and at other locations in the state of New York who became totally or partially separated from employment on or After August 29, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC, this 11th Day of January, 1995.

Victoria J. Trunzo,

Progam Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–2037 Filed 1–26–95; 8:45 am]

BILLING CODE 4610–30–M

[TA–W–30,362]

Phillips-Van Heusen Warehouse & Distribution Center, West Hazleton, PA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Phillips-Van Heusen Warehouse & Distribution Center, West Hazleton, Pennsylvania. The review indicated that the application contained no new substantial information which would

bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–30,362; Phillips-Van Heusen Warehouse & Distribution Center, West Hazleton, PA (January 12, 1995)

Signed at Washington, D.C. this 18th day of January, 1995.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–2038 Filed 1–26–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,493]

Texaco Exploration and Production, Incorporated Denver Division, Denver, CO; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 14, 1994 in response to a worker petition which was filed on behalf of workers and former workers at the Denver Division of Texaco Exploration and Production, Incorporated, Denver, Colorado (TA–W–30,493).

The company has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C. this 12th day of January 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–2039 Filed 1–26–95; 8:45 am]

BILLING CODE 4510–30–M

NUCLEAR REGULATORY COMMISSION

U.S. Enrichment Corporation's Gaseous Diffusion Plants Establishment of Local Public Document Rooms

The Nuclear Regulatory Commission (NRC) has established a local public document room (LPDR) for each of the U.S. Enrichment Corporation's (USEC) Paducah and Portsmouth gaseous diffusion plants located in Paducah, Kentucky, and Piketon, Ohio, respectively.

Members of the public may now inspect and copy documents and correspondence related to the Paducah and Portsmouth Plants at the following locations:

1. *USEC Paducah Plant:* Paducah Public Library, 555 Washington Street, Paducah, Kentucky 42003. Hours of operation: Monday through Thursday 9:00 a.m. to 9:00 p.m.; Friday and Saturday 9:00 a.m. to 6:00 p.m.; and Sunday 1:00 p.m. to 6:00 p.m. Contact: Ms. Marie Liang, Assistant Director, telephone number (502) 442–2510.

2. *USEC Portsmouth Plant:* Portsmouth Public Library, 1220 Gallia Street, Portsmouth, Ohio 45662. Hours of operation: Monday through Friday 9:00 a.m. to 8:00 p.m.; Saturday 9:00 a.m. to 5:30 p.m.; and Sunday 1:00 p.m. to 5:00 p.m. Contact: Mr. Charles T. Cook, Director, telephone number (614) 354–5688.

Interested parties may visit or contact either of the LPDRs directly or may address their requests for records to the NRC's Public Document Room, 2120 L Street NW., Washington, DC 20555, or telephone (202) 634–3273.

Questions concerning the NRC's local public document room program or the availability of documents should be addressed to Ms. Jona L. Souder, LPDR Program Manager, Freedom of Information/Local Public Document Room Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone number (301) 415–7170, or toll-free 1–800–638–8081.

Dated at Rockville, Maryland, this 24th day of January, 1995.

For the Nuclear Regulatory Commission.

Carlton C. Kammerer,

Director, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 95–2078 Filed 1–26–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–382]

Entergy Operations, Inc; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–38 issued to Entergy Operations, Inc. (the licensee), for operation of the Waterford Steam Electric Station, Unit 3, located in St. Charles Parish, Louisiana.

The proposed amendment would modify the technical specifications (TSs) by adding a new TS 3.0.5, and the associated Bases. The new TS 3.0.5 will allow the equipment removed from service or declared inoperable to comply with ACTIONS to be returned to service under administrative controls solely to perform testing required to demonstrate its OPERABILITY or the OPERABILITY of other equipment. This proposed change is based on the Combustion Engineering improved standard TSs approved by the NRC.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involved a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change will allow an orderly return to service of inoperable equipment. Specification 3.0.5 will permit equipment removed from service to comply with required Actions to be returned to service under administrative controls to verify the operability of the equipment being returned to service or operability of other equipment. The administrative controls will ensure the time involved will be limited to only the time required to demonstrate the component or system operability. This new specification provides an acceptable method of demonstrating the operability of TS equipment before it is returned to service and allows for verifying other TS equipment is operable. Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed change will not alter the operation of the plant or the manner in which the plant is operated. The equipment is only being tested in its design configuration or being returned to service to allow testing of another component or system. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed Specification will only allow the return to service of equipment that is expected to fulfill its safety function. The use of Specification 3.0.5 will be limited to the performance of testing on the equipment being returned to service or on other equipment that is dependent on the equipment being returned to service. The testing is limited to post maintenance testing and testing to prove operability. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By February 27, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to William D. Beckner: petitioner's name and telephone number, date petition was mailed, plant name, and publication data and page number of this **Federal**

Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to N. S. Reynolds, Esq., Winston & Strawan, 1400 L Street, NW., Washington DC 20005–3502, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated January 19, 1995, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Dated at Rockville, Maryland, this 23rd day of January 1995.

For the Nuclear Regulatory Commission.

Chandu P. Patgel,

Project Manager, Project Directorate IV–I, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–2079 Filed 1–26–95; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35255; File No. SR–DTC–94–17]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Participation in the Lost and Stolen Securities Program

January 20, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 13, 1994, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

DTC proposes to participate in the Securities and Exchange Commission's Lost and Stolen Securities Program as a direct inquirer on behalf of DTC participants that use DTC's branch receive service.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it has received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to allow DTC to participate in the Lost and Stolen Securities Program as a direct inquirer on behalf of inquirers using DTC's branch receive service (DTC Inquirers). When an appropriate securities certificate comes into DTC's possession, DTC, acting on behalf of a DTC Inquirer, will make an inquiry to the Commission's designee on behalf of the DTC Inquirer to determine whether the certificate was reported lost, missing, counterfeit, or stolen. When DTC is notified that the inquiry matches a missing, lost, counterfeit, or stolen security report, DTC will provide the DTC Inquirer with whatever related information the Commission's designee provides to DTC. In addition, DTC will make, as appropriate, reports to the Commission's designee on behalf of DTC Inquirers.

Currently, DTC participates in the Lost and Stolen Securities Program by making inquiries and reports on its own behalf. The Commission contemplated that the Lost and Stolen Securities Program would allow the proposed structure of one reporting institution assuming the inquiry responsibility of other reporting institutions.[3]

DTC proposes to maintain and preserve in an easily accessible place for a minimum of three years copies of all Forms X–17F–1A filed by DTC on behalf of DTC Inquirers, all agreements with DTC Inquirers regarding registration or other aspects of the Lost and Stolen Securities Program, and all confirmations and other information received from the Commission or its designee as a result of inquiry.

Section 17A(b)(3)(A) of the Act[4] requires that a clearing agency be designed to facilitate the prompt and accurate clearance and settlement of securities transactions. DTC believes that allowing it to act as Direct Inquirer is consistent with Section 17A(b)(3)(A) in that it enables DTC to use its automated systems to make communications with the Commission's designee faster and more accurate than such communications otherwise might be made. Allowing DTC to act as Direct Inquirer will allow participants in the branch receive program that may not have a sufficient volume of securities transactions to otherwise justify the expense of participating as direct inquirers to participate as inquirers. Also, according to DTC, the rule change will permit the Commission to capitalize on the natural synergy of allowing DTC, a registered clearing agency, to act as a Direct Inquirer on behalf of participants using DTC's branch receive program. These participants are by virtue of their status as clearing agency participants automatically ''reporting institutions'' under Rule 17f–(1) of the Act[5] and thus are required to register with the Commission's designee unless an exemption is available.

The proposed rule change will allow DTC to assist institutions and the public in tracking and deterring trafficking in lost, stolen, missing, and counterfeit securities thereby bolstering the effectiveness of the Lost and Stolen Securities Program and reducing the risk of financial losses that otherwise might occur. This promotes efficiency in the clearance and settlement of securities transactions and is consistent with Section 17A(b)(3)(A) of the Act.

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] For a complete description of DTC's branch receive program, refer to Securities Exchange Act Release No. 34600 (August 25, 1994), 59 FR 45317 [File No. SR–DTC–94–05] (order approving a proposed rule change establishing a service for the routing of securities certificates and related documentation to DTC).

[3] For a detailed description of the Lost and Stolen Securities Program, refer to Securities Exchange Act Release No. 13832 (August 12, 1977), 42 FR 41022 (implementation of program for reporting and inquiring with respect to missing, lost, counterfeit or stolen securities).

[4] 15 U.S.C. § 78q–1(b)(3)(A) (1988).

[5] 17 CFR 240.17f–1(a) (1994).

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

DTC has not solicited or received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) [6] of the Act and pursuant to Rule 19b–4(e)(4) [7] promulgated thereunder because the proposal constitutes a change in an existing service of a registered clearing agency that does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to file No. SR–DTC–94–17 and should be submitted by February 17, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. 95–2070 Filed 1–26–95; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78s(b)(3)(A)(iii) (1988).

[7] 17 CFR 240.19b–4(e)(4) (1994).

[8] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35256; File No. SR–MCC–94–16]

Self-Regulatory Organizations; Midwest Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Implementation of a Three-Day Settlement Standard

January 20, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 28, 1994, the Midwest Clearing Corporation (''MCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by MCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

MCC proposed to modify its rules to implement a three business day settlement standard for securities transactions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On October 6, 1993, the Commission adopted Rule 15c6–1 under the Act which establishes three business days after the trade date (''T+3'') instead of five business days (''T+5'') as the standard settlement cycle for most securities transactions.[2] The rule will become effective June 7, 1995.[3]

The proposed rule change will amend Interpretations and Policies .01 of Rule 2 of Article II of MCC's rules to shorten the time frame in which contract data of comparison data must be submitted to MCC to ensure that MCC has sufficient time to review such contracts and receive the necessary protection to guarantee the performance of such contract to the contra-broker in a T+3 environment. Under such interpretations, MCC reserves the right to cause such contract to be settled under the trade-by-trade system or to reverse the trade in the continuous net settlement system (1) if a regular way contract is not recorded by MCC in a participant's account until T+4, (2) if a regular way contract is not submitted by another clearing corporation for recordation in a participant's account until T+4, or (3) if the contract is to be settled through the participant's account at another clearing corporation and the contract is not recorded until T+3. The proposed rule change will shorten each time frames by two days.

The proposed rule change also will amend Article III, Rule 2, Section 9 to state that a participant will be deemed to have requested delivery of a security if the participant has entered into contracts to be settled by MCC which will result in net settling sales of such security by the participant during the next two, instead of four, business days. The proposed rule change also will amend the definition of ''as-of contract'' in Article I, Rule 1, to include contracts for which the intended date of settlement is one to two days, instead of four days, after the recording of the transaction by MCC.

The MCC's implementation of this rules change will be consistent with the ''T+3'' conversion schedule which the National Securities Clearing Corporation has proposed for industry use. The schedule is as follows:

Trade date	Settlement cycle	Settlement date
June 2 Friday.	5 day	June 9 Friday
June 5 Monday.	4 day	June 9 Friday

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 33023 (October 6, 1993), 58 FR 52891.

[3] Securities Exchange Act Release No. 34952 (November 9, 1994), 59 FR 59137.

Trade date	Settlement cycle	Settlement date
June 6 Tuesday.	4 day	June 12 Monday
June 7 Wednesday.	3 day	June 12 Monday

If the Commission determines to alter the exemptions currently provided in Rule 15c6–1, MCC may need to undertake additional rule amendments. It is intended that the proposed rule changes are to become effective on the same date as Commission Rule 15c6–1.

The proposed rule change is consistent with Section 17A of the Exchange Act in that it will facilitate the safeguarding of securities and funds which are in MCC's custody or control or for which MCC is responsible. The proposed rule change also is consistent with proposed Rule 15c6–1 which requires brokers or dealers to settle most securities transactions no later than the third business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction.

B. Self-Regulatory Organization's Statement on Burden on Competition

MCC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others.

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which MCC consents, the Commission will:

(A) by order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of MCC. All submissions should refer to File No. SR–MCC–94–16 and should be submitted by February 17, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–2071 Filed 1–26–95; 8:45 am]

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[Release No. 34–35259; File Nos. SR–MCC–94–15 and SR–MSTC–94–18]

Self-Regulatory Organizations; Midwest Clearing Corporation and Midwest Securities Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Changes Eliminating MBS Clearing Corporation's Right to Collect Monies From the Participants Funds

January 20, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 8, 1994, Midwest Clearing Corporation (''MCC'') and Midwest Securities Trust Company (''MSTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes (File Nos. SR–MCC–94–15 and SR–MSTC–94–18) as described in Items I, II, and III below, which items have been prepared primarily by MCC and MSTC. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

[1] 15 U.S.C. § 78s(b)(1) (1988).

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

These rule changes amend Article IX, Rule 2, Section 3 of MCC's Rules and Article VI, Rule 2, Section 3 of MSTC's Rules to eliminate the right of MBS Clearing Corporation (''MBS'') to collect monies, respectively, from the MCC Participants Fund and from the MSTC Participants Fund when an MCC or MSTC participant fails to discharge a liability to MBS.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, MCC and MSTC included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. MCC and MSTC have prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

The purpose of the proposed changes is to eliminate the right of MBS to collect money from the MCC Participants Fund and from the MSTC Participants Fund when an MCC participant or an MSTC participant, respectively, fails to discharge a liability owed to MBS. MBS is no longer affiliated with MCC, MSTC or with the Chicago Stock Exchange (''CHX''), the parent corporation of both MCC and MSTC.[2] The proposed rule changes also amend Article II, Rule 3, Section 1 and Article IX, Rule 2, Section 3 of MCC's Rules and Article VI, Rule 2, Section 3 of MSTC's Rules to change references to the Midwest Stock Exchange to either CHX or the Exchange in order to reflect CHX's name change.

MCC and MSTC believe that the proposed rule changes are consistent with Section 17A of the Act[3] in that they provide for the prompt and accurate clearance and settlement of securities transactions including the safeguarding of securities and funds related thereto.

[2] In August 1994, the CHX sold its interest in MBX to the participants of MBS and to the National Securities Clearing Corporation.

[3] 15 U.S.C. § 78q–1 (1988).

(B) Self-Regulatory Organizations' Statements on Burden on Competition

MCC and MSTC believe that the proposed rule changes will not place any burden on competition.

(C) Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Changes Received From Members, Participants, or Others

MCC and MSTC have neither solicited nor received any written comments on the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

The foregoing rule changes have become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [4] and subparagraph (e)(3) of Rule 19b–4 thereunder [5] because they are concerned solely with the administration of the self-regulatory organizations. At any time within sixty days of the filing of such proposed rule changes, the Commission may summarily abrogate such rule changes if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal offices of MCC and MSTC. All submissions should refer to File Numbers SR–MCC–94–15 and SR–MSTC–94–18 and should be submitted by February 17, 1995.

[4] 15 U.S.C. 78s(b)(3)(A)(iii) (1988).

[5] 17 CFR 240.19b–4(e)(3) (1994).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–2072 Filed 1–26–95; 8:45 am]

BILLING CODE 8010–01–M

[6] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35257; International Series Release No. 776; File No. SR–NASD–94–55]

Self-Regulatory Organizations; National Association of Securities Dealers; Notice of Proposed Rule Change Relating to the Access of West Canada Clearing Corporation and Its Members to the Automated Confirmation Transaction Service

January 20, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 12, 1994, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to amend its rule regarding the Automated Confirmation Transaction services (''ACT'') to allow West Canada Clearing Corporation (''West Canada''), a nonmember of the NASD, and members of West Canada who are not members of the NASD to access this service. The NASD also proposes to amend the ACT rule to reflect that NASD members functioning as market makers in over-the-counter equity securities are also classified as ACT participants.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD created and implemented the ACT system in response to problems experienced in the wake of the October 1987 market break and at the urging of the Commission to consider accelerating efforts to generate same day compared trades.[2] ACT has three primary features: (1) trade match process (*i.e.*, the comparison of trade information and the submission of locked-in trades for regular way settlement to clearing agencies on a trade date or next day [''T+1''] basis); [3] (2) trade reporting for transactions in securities that are subject to real time trade reporting requirements; and (3) risk management features that provide firms with a centralized, automated environment for assessing market exposure during and after the trading day and that permit clearing firms to monitor and respond to the ongoing trading activities of their correspondents.[4]

Since its implementation, ACT has functioned as an effective and efficient

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] For a description of ACT, refer to Securities Exchange Act Release Nos. 27229 (September 8, 1989), 54 FR 38484 [File No. SR–NASD–89–25] (order partially approving proposed rule change to permit ACT to be used by selfclearing firms) and 28583 (October 26, 1990), 55 FR 46120 [File No. SR–NASD–89–25] (order approving remainder of File SR–NASD–89–25 to permit ACT to be used by introducing and correspondent broker-dealers).

[3] ACT uses three methods to lock-in trades: (1) trade-by-trade match, whereby both sides of the trade are reported to ACT and matched; (2) trade acceptance, whereby one side of the trade is reported to ACT and accepted by the contra-side; and 93) aggregate volume match, whereby ACT performs a batch-type comparison at the end of each day that aggregates previously unmatched trade reports to effect a match. (For example, two identical trade reports for 300 and 400 shares of the same security may be matched with a 700 share trade report.)

[4] Among others, ACT has the following risk management capabilities. First, ACT can compute the dollar value of each trade report entered thereby allowing member firms to assess their market exposure during the trading day. Second, clearing firms can establish daily gross dollar thresholds for each correspondent's trading activity. If a correspondent reaches or exceeds the threshold, the clearing firm is so notified. Third, ACT alerts clearing firms when a correspondent reaches 70% or 100% of its daily gross dollar threshold. Fourth, ACT has a single trade limit that provides clearing firms with a 15 minute review period prior to becoming obligated to clear a trade of $1,000,000 or more executed by one of its correspondents. Fifth, ACT has a super cap limit set at two times the gross dollar thresholds for purchases and sales but in no event less than $1 million that provides clearing firms with a 15 minute review period prior to becoming obligated to clear a trade of $200,000 or more executed by one of its correspondents once the limit is surpassed.

vehicle to compress the trade comparison cycle thereby facilitating the prompt and accurate clearance and settlement of securities transactions and enabling NASD members to know their positions and market exposure before trading commences the next day. As a facility of The Nasdaq Stock Market operated by The Nasdaq Stock Market, Inc. (''NSMI'') subsidiary of the NASD, access to the ACT system is limited to NASD members. Recently, the NASD received a request from West Canada for access to ACT for trade comparison purposes only.[5] Presently, when an NASD member effects a transaction with a West Canada member, the transaction typically is compared, cleared, and settled in the following manner. The NASD member enters the trade into ACT with the West Canada member designated as the contra-party. Because the West Canada member presently is not an ACT participant, ACT will respond to the NASD member ''contra-side not ready.'' ACT then will report the trade for trade reporting purposes and will transmit the trade to the National Securities Clearing Corporation (''NSCC'') as a one-sided trade for trade comparison. The West Canada member submits the trade information to West Canada that in turn sends the trade to the Midwest Clearing Corporation (''MCC''). MCC then transmits the trade report to NSCC by 2:00 a.m. on T+1 for comparison. NSCC then compares the trade reports, and assuming there is a match, NSCC submits the West Canada member's side of the transaction to MCC for clearance and settlement; the NASD member's side of the transaction is retained by NSCC for clearance and settlement. If there is a discrepancy concerning the terms of the transaction, the trade reconciliation process involves the two clearing corporations and the two parties to the transaction and can last until T+3. Although the NASD believes that the facilities of NSCC and MCC have been used to compare trades between NASD and West Canada members adequately, the NASD believes the trade comparison procedure for these trades would be streamlined and made more efficient through the use of ACT.

The proposal to provide West Canada access to ACT has been structured so that the primary parties to the arrangement are West Canada and NSMI, the NASD subsidiary that owns and operates ACT. Rather than negotiating separate contracts with each individual organization, the NASD believes that it is more efficient for NSMI to negotiate with the exchange, market, or clearing entity to which the non-NASD member belongs, in this case West Canada. Accordingly, under the proposed rule change, West Canada will operate as a service bureau to input information into ACT on behalf of West Canada members. Individual West Canada members will not be able to obtain access to ACT unless there is first an overriding, umbrella-type agreement reached between NSMI and West Canada. Thus, whenever NASD members transact with West Canada members in ACT eligible securities, they will be able to use ACT just as they do now for comparing regular-way trades with other NASD members.

In order for West Canada to have access to ACT, proposed Section (b)(5)(B) of the ACT Rules provides that West Canada must execute a Non-member Clearing Organization ACT Participant Application Agreement. This agreement will require West Canada to abide by the ACT rules and regulations and will ensure that trades processed through ACT by West Canada on behalf of West Canada members will be accepted for clearance and settlement. The agreement also will address NSMI concerns over nonpayment of service charges, the financial exposure and liabilities of the parties, and methods of redress should West Canada or a West Canada member fail to comply with the relevant NASD rules and regulations. In addition, proposed section (b)(5)(B)(6) of the ACT Rules provides that West Canada will not be able to input information into ACT on behalf of a West Canada member unless such member also enters into a Non-Member ACT Access Participant Application Agreement with NSMI. In the case of a clearing broker, this agreement provides that the member will accept and will settle each trade that ACT identifies as having been effected by such member or any of its correspondents on the regularly scheduled settlement date. In the case of an order entry firm, the firm must agree to accept and settle each trade that it has effected or, if settlement is to be made through a clearing member, guarantee the acceptance and settlement of each ACT-identified trade by the clearing member on the regularly scheduled settlement date.

The proposed rule change also provides that a nonmember clearing organization will not be given access to ACT unless it: (1) Is a clearing agency registered under the Act; (2) maintains membership in a registered clearing agency; or (3) maintains an effective clearing arrangement with a registered clearing agency. West Canada has an effective clearing arrangement with MCC and thus satisfies this requirement.[6] This requirement will ensure that non-NASD members given access to NASD facilities will otherwise be subject to Commission regulation in general, and Commission regulation concerning the comparison, clearance, and settlement of securities, in particular.

The proposed rule change also provides that West Canada may permit its members that operate as clearing brokers or order entry firms to have direct access to ACT but only if the West Canada member has executed a Non-Member ACT Participant Application Agreement with NSMI. This agreement will help to ensure that West Canada members adhere to relevant NASD and Commission rules and regulations and commit to accept and settle or guarantee the acceptance and settlement of trades for which ACT has identified those members as being responsible.

As a result, the inefficiencies inherent in the current practice of submitting two-sided transaction reports to two separate clearing corporations for each transaction for comparison will be eliminated. The compressed comparison cycle in turn also should result in lower exposure to NASD members and their customers from price movements while

[5] The present filing solely addresses the access of West Canada to ACT. Other proposals concerning nonmember access to ACT, if any, will be raised in separate rule filings submitted pursuant to Section 19 of the Act.

[6] In January 1983, MCC, Midwest Securities Trust Company (''MSTC''), the Vancouver Stock Exchange, and the Vancouver Stock Exchange Service Corporation (''VSESC''), (now known as West Canada Clearing Corporation [''WCCC'']) (''VSESC/WCCC'') created the American and Canadian Connection for Efficient Securities Settlements (''ACCESS''). Through ACCESS, over-the-counter securities transactions between the U.S. and Canadian broker-dealers in both U.S. and Canadian securities are compared, cleared, and settled. Trades between U.S. and Canadian broker-dealers involving securities listed on U.S. securities exchanges, Canadian securities exchanges, or the National Association of Securities Dealers Automated Quotation (''NASDAQ'') System are eligible for clearance and settlement through ACCESS. To establish ACCESS, VSESC/WCCC became an MCC/MSTC participant, and opened separate sponsored MCC/MSTC accounts for Canadian broker-dealers that were participants of VSESC. As an MCC/MSTC member, VSESC/WCCC is liable as principal (*i.e.*, guarantees) all trades that it submits including all trades in its sponsored accounts. Some safeguards on ACCESS activity include, contributions by VSESC/WCCC to MCC/MSTC's participant fund based on VSESC/WCCC's total activity, and a cash reserve of over 250,000 Canadian dollars maintained by VSESC/WCCC to be used to satisfy the obligations of any VSESC/WCCC participant that may become insolvent. In addition, VSE guarantees all VSESC/WCCC liabilities to MCC/MSTC. Letter from Jonathan Kallman, Assistant Director, Division of Market Regulation, Commission, to Michael Wise, Associate Counsel, MCC/MSTC (September 12, 1985).

transactions are open or uncompared, faster and more efficient trade reconciliation and confirmation, and increased efficiency of back office operations. Finally, the NASD notes that granting West Canada access to ACT will not affect or modify the process by which trades between NASD and West Canada members are cleared and settled. The proposal strictly provides a more efficient and streamlined method to compare trades between West Canada and NASD members in preparation for clearance and settlement.

The NASD also does not believe that granting West Canada and West Canada members access to ACt will jeopardize the integrity of ACT or any other market facility operated by NSMI. In this regard, before West Canada or any of its members are granted access to ACT, these entities must agree to be bound by the terms of the revised ACT Participant Application Agreements, which establish the terms and conditions under which West Canada and its members will receive access to ACT. The NASD believes that the revised Agreements will provide an adequate and sufficient surrogate for NASD membership which otherwise would provide the jurisdictional nexus to ensure compliance with applicable NASD rules and regulations. Initial and continuing access to ACT by nonmembers will be specifically conditioned upon adherence to the terms and conditions of these agreements. West Canada and West Canada members also will be required to maintain the physical security of the equipment used to input trades into ACT. Based on these factors, the NASD believes that granting West Canada and West Canada members access to ACT will not compromise the integrity or operation of ACT. Further, the NASD notes that the Commission has allowed nonmember access to ACT in the context of trade reporting for Nasdaq-listed securities traded on an exchange pursuant to unlisted trading privileges (''UTP''). Specifically, UTP participants may trade report through ACT to comply with transaction reporting requirements.

Apart from addressing ACT access by West Canada and West Canada members, this proposed rule change proposes to amend Section a) 2. of the ACT Rules which defines the term ''Participant.'' As amended, this definition will include NASD member firms that function as market makers in over-the-counter (''OTC'') equity securities that are eligible for clearing via the NSCC's facilities.[7] The instant modification will clarify that ACT participant status encompasses NASD members that function as market makers in such securities via the OTC Bulletin Board service or another interdealer quotation system.[8] This element of the rule proposal is a technical change that has no bearing on the provision regarding ACT access to West Canada.

The NASD believes that the proposed rule change is consistent with Sections 15A(b)(6)[9] and 17A(a)[10] of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Section 17A(a) provides that the prompt and accurate clearance and settlement of securities transactions is necessary for the protection of investors and that inefficient procedures for clearance and settlement impose unnecessary costs on investors.

By streamlining and improving the process by which trades between NASD and West Canada members are compared, the NASD believes the prompt and accurate clearance and settlement of securities will be facilitated and promoted. In addition, by compressing the time-period in which open trades are left uncompared, market participants will be better able to access and evaluate their market exposure thereby contributing to fair and orderly markets and the protection of investors and the public interest. Moreover, the NASD believes the proposed rule change is consistent with Rule 15c6–1, which mandates settlement on the third business day following the trade date (''T+3'') by June 7, 1995.[11] Because ACT generally achieves locked-in trades within minutes of an execution, the NASD believes the ability to comply with the shorter time constraints necessitated by T+3 settlement will be enhanced. Accordingly, the NASD proposes to amend its rules governing ACT to accommodate the access of West Canada to ACT.[12]

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. by order approve such proposed rule change or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the

[7] Securities Exchange Act Release No. 30415 (February 26, 1992), 57 FR 7829 [File No. SR–NASD–92–5] (order approving OTC Equity Securities as ACT eligible securities).

[8] Under Schedule D to the NASD By-Laws, Part XII, Section 1(d) defines ''OTC Market Maker'' to mean any NASD member that holds itself out as being a market maker in any OTC Equity Security by entering proprietary quotations or indications of interest in an inter-dealer quotation system.

[9] 15 U.S.C. § 78o–3(b)(6) (1988).

[10] 15 U.S.C. § 78q–1(a) (1988).

[11] On October 6, 1993, the Commission adopted Rule 15c6–1 under the Act, which establishes three business days after the trade date instead of five business days as the standard settlement timeframe for most broker-dealer transactions. Securities Exchange Act Release No. 33023 (October 6, 1993), 58 FR 52891 (release adopting Rule 15c6–1). On November 16, 1994, the Commission changed the effective date of Rule 15c6–1 from June 1, 1995, to June 7, 1995. Securities Exchange Act Release No. 34952 (November 9, 1994), 59 FR 59137.

[12] Access to the ACT Service desk, however, will continue to be limited to NASD member firms. The ACT Service desk allows input into ACT by those firms that do not have direct access to ACT, or by direct participant's of ACT that are having trouble with their own system.

public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–94–55 and should be submitted by February 17, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

Jonathan G. Katz,

Secretary.

[FR Doc. 95–2073 Filed 1–26–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35258; File No. SR–Phlx–94–15]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Limited Registration/Floor Member Registration Status and the Use of the Series 7A Examination

January 20, 1995.

On October 3, 1994, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rule 604, Registration and Termination of Registered Representatives, to adopt a limited registration provision applicable to persons conducting a professional customer business from the Phlx trading floor and to adopt the *Content Outline for the Examination Module for Floor Members Engaged in Public Business with Professional Customers* (''Content Outline''). The Exchange also proposes to adopt a requirement that persons conducting functions customarily performed by a registered representative must register and be qualified pursuant to Phlx Rule 604.

The proposed rule changes were published for comment in Securities Exchange Act Release No. 35055 (December 7, 1994), 59 FR 64452 (December 14, 1994). No comments were received on the proposals. This order approves the proposed rule changes.

[13] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

I. Proposal

Phlx Rule 604, Registration and Termination of Registered Representatives, currently requires every registered representative of a member or participant organization to be registered with and approved by the Phlx. The Phlx proposes to amend Rule 604 to clarify that not only registered representatives, but also persons conducting functions customarily performed by a registered representative must register and be qualified pursuant to Phlx Rule 604.[3] The Exchange seeks to clarify this requirement by adopting a specific provision in Rule 604(a) which would expressly state that conducting a public business requires registration pursuant to the General Securities Registered Representative (''Series 7'') Examination.[4]

In addition to amending Rule 604(a), the Exchange seeks to adopt a new paragraph (c) of Rule 604 to permit a limited registration for persons conducting a professional customer business from the Phlx trading floor. In lieu of full registration as a registered representative, the proposed limited registration would apply to accepting orders from professional customers only, as defined in proposed Rule 604(c)(i).[5] Limited registration/floor members would be required to register as such with the Exchange and pass an examination.[6] This examination, a subset of the Series 7 Examination, would be tailored toward the professional customer business being conducted, testing knowledge required to conduct such a business. The advantage of such an examination is that it would cover important topics relevant to conducting a professional customer business, but not knowledge particular to conducting a retail business. The Content Outline details the topics contained in the examination: federal and state securities laws; general characteristics of equity securities and corporate bonds; conduct respecting customer accounts; primary and secondary securities markets; and order execution, confirmation, settlement and recordkeeping.

[3] The Exchange notes that its members who are also NYSE members, for example, are currently subject to the NYSE's registration provisions; ''Phlx-only'' members would now be subject to a corresponding provision.

[4] The Series 7 Examination is an industry-wide qualification examination for persons seeking registration as general securities representatives. The Commission recently approved a proposed rule change that updated the Series 7 Examination. Securities Exchange Act Release No. 34853 (October 18, 1994), 59 FR 53694.

[5] The proposal would define a professional customer to include: a bank, trust company, insurance company, investment trust, state or political subdivision thereof, charitable or nonprofit educational institution regulated under the laws of the United States, or any state, or pension or profit sharing plan subject to ERISA or of an agency of the United States or of a state or political subdivision thereof or any person who has, or has under management, net tangible assets of at least sixteen million dollars. For purposes of this definition of professional customer, the term ''person'' shall mean the same as that term is defined in Phlx Rule 20, except that it shall not include natural persons.

[6] The Exchange will use the Series 7A Examination that was approved in SR–NYSE–93–10 (Securities Exchange Act Release No. 32698 (July 29, 1993), 58 FR 41539). The Series 7A Examination for Phlx members will be administered by the New York Stock Exchange, Inc. (''NYSE''). Telephone conversation between Edith Hallahan, Special Counsel, Regulatory Services, Phlx and Elisa Metzger, Senior Counsel, Office of Market Supervision, Division of Market Regulation, SEC, on December 5, 1994.

II. Discussion

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Sections 6(b)(5) and 6(c)(3)(B) of the Act.[7] Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Section 6(c)(3)(B) provides that a national securities exchange may examine and verify the qualifications of an applicant to become a person associated with a member in accordance with procedures established by the rules of the exchange, and require any person associated with a member, or any class of such persons, to be registered with the exchange in accordance with procedures so established.

The Commission also believes that the proposed rule changes are consistent with Section 15(b)(7) of the Act[8] which stipulates that prior to effecting any transaction in, or inducing the purchase or sale of, any security, a registered broker or dealer must meet certain standards of operational capability, and that such broker or dealer (and all natural persons associated with such broker or dealer) must meet certain standards of training, experience, competence, and such other qualifications as the Commission finds necessary or appropriate in the public interest or for the protection of investors.

The Commission also believes that the amendment to Rule 604(a) will clarify

[7] 15 U.S.C. § 78f(b)(5) and (c)(3)(B) (1988).

[8] 15 U.S.C. § 78o(b)(7) (1988).

and put all persons on notice that any person who conducts a public business is required to be registered and qualified as a registered representative. Such registration would require, among other things, that a person complete the Series 7 examination, as described in rule 604(a)(ii).

The Commission believes that the Series 7A Examination requirement should help to ensure that only those floor members with a comprehensive knowledge of Exchange rules, as well as an understanding of the Act, will be able to conduct a public business limited to accepting orders directly from professional customers for execution on the trading floor. The Commission has determined that the Content Outline for the Series 7A Examination is sufficiently detailed and covers the appropriate information so as to provide an adequate basis for studying the topics covered on the examination. This outline should help to ensure that those persons taking the Series 7A Examination fully understand the subject matter of the examination.

Finally, the Commission believes that the proposed limited registration requirement for floor members engaged in a public business with professional customers is reasonable and is consistent with the requirements of Sections 6(b)(5) and 6(c)(3)(B) of the Act. This new category of registration would permit only those floor members who have demonstrated adequate skills and knowledge to conduct a public business which is generally limited to accepting orders directly from professional customers, as defined in the rule,[9] for execution on the trading floor. The Phlx has argued that the level of knowledge, skills and abilities necessary to conduct such business is less than that needed to conduct a full service business with retail customers. The Commission believes that, because the Phlx will ensure that floor members handling professional customer business are adequately qualified through the use of either the Series 7 or Series 7A Examination, it is consistent with the Phlx's regulatory responsibilities to establish this category of limited registration.

III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–Phlx–94–15) is approved.

[9] *See supra* note 5.

[10] 15 U.S.C. § 78s(b)(2) (1988).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jonathan G. Katz,

Secretary.

[FR Doc. 95–2074 Filed 1–26–95; 8:45 am]

BILLING CODE 8010–01–M

[11] 17 CFR 200.30–3(a)(12) (1991).

[Release No. 35–26219]

Filings Under the Public Utility Holding Company Act of 1935, as amended (''Act'')

January 20, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by February 13, 1995, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applications(s) and/or declarant(s) at the address(s) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Entergy Corporation, et al.

[70–8535]

Entergy Corporation (''Entergy''), 639 Loyola Street, New Orleans, Louisiana 70113, a registered holding company, and its bulk power marketing subsidiary, Entergy Power, Inc. (''EPI'') (together, ''Applicants''), Three Financial Center, Little Rock, Arkansas 72211, have filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rules 42, 43 and 45 thereunder.

The Applicants request authority for: (1) Entergy to recapitalize EPI through the conversion of outstanding amounts of principal and interest under the existing $250 million loan agreement between Entergy and EPI (''Loan Agreement'') to capital contributions; and (2) Entergy to make additional equity investments in EPI from time-to-time through December 31, 1995 to fund EPI's working capital and other capital requirements.

By Commission orders, dated August 27, 1990 (HCAR No. 25136) [1] and July 16, 1992 (HCAR No. 25583) (''Orders''), EPI was formed and has been financed by Entergy to participate as a supplier of capacity and energy in the wholesale bulk power market. Under the Orders, EPI acquired the ownership interests of its associate company, Arkansas Power & Light Company in Unit 2 of the Independent Steam Electric Generating Station and Unit 2 of the Ritchie Steam Electric Generating Station representing an aggregate of 809 MW of capacity (''Transferred Capacity''). The Transferred Capacity included various leases, mine facilities and mining equipment, oil storage and handling facilities associated with providing fuel supplies for the Transferred Capacity.

Entergy and EPA state that various constraints on EPI's business activities, including the highly leveraged nature of its authorized capital structure and the consequent debt service requirements, which currently amounts to approximately $4.1 million per quarter, have had a negative effect on EPI's financial condition and significantly impaired its ability to market and sell the Transferred Capacity. In order to provide EPI with a capital structure more suited to EPI's authorized activities by eliminating EPI's debt service requirements under the Loan Agreement, Entergy and EPI propose to terminate the Loan Agreement and to convert to capital contributions all outstanding borrowings, in the approximate amount of $217.55 million, together with any accrued and unpaid interest through the date of the conversion. After the recapitalization, EPI's capital structure would consist of 100% equity.

The Applicants further propose that Entergy make additional equity investments in EPI from time-to-time through December 31, 1995 in an aggregate amount not to exceed the approximate total principal amount of additional borrowings EPI could have been under the Loan Agreement, as of September 30, 1994, or $32.45 million.

[1] This order is currently before the commission on remand from the D.C. Circuit Court of Appeals. See, *New Orleans* v. *SEC*, 969 F.2d 1163 (D.C. Cir. 1992).

Additional investments by Entergy may take the form of the issuance and sale by EPI, and the purchase by Entergy, of additional shares of EPI's Common Stock and/or capital contributions. The additional investments would be used by EPI to meet its working capital requirements and to pay its associate companies for services provided to EPI.

Eastern Utilities Associates, et al.

[70–8539]

Eastern Utilities Associates (''EUA''), P.O. Box 2333, Boston, Massachusetts 02107, a registered holding company, and EUA Cogenex Corporation (''Cogenex''), wholly owned nonutility subsidiary company of EUA, and EUA Cogenex-Canada, Inc. (''Cogen-Canada''), and Northeast Energy Management, Inc. (''NEM''), two wholly owned nonutility subsidiary companies of Cogenex, all located at Boott Mills South, 100 Foot of John Street, Lowell, Massachusetts 01852, have filed an application-declaration under sections 6(a), 7, 9(a), 10, and 12(b) of the Act, and rules 42, 43 and 45 thereunder.

EUA proposes to invest in Cogenex, through December 31, 1997, up to an aggregate principal amount of $50 million through any one or combination of short-terms loans, capital contributions, or purchases of Cogenex common stock. EUA proposes to borrow up to $25 million under the EUA system credit lines, which if used, would fund the short-term loans to Cogenex. The terms and conditions of any loans made to Cogenex would be the same as the terms and conditions under the EUA system credit lines.

Cogenex proposes, through December 31, 1997, to obtain financing, in an amount not to exceed $200 million, from any of these sources: (i) up to $50 million from EUA; and (ii) $150 million from (a) the issuance and sale of unsecured notes (''New Notes'') through a private or a public offering, (b) the borrowing of proceeds from the issuance and sale of bonds by a state or political subdivision agency (''Bonds''), and (c) the borrowing of up to $75 million under the EUA system credit lines. Cogenex will use the proceeds: (i) to pay, reduce, or renew short-term bank loans; (ii) to pay, reduce, or renew short-term loans from EUA; (iii) for working capital to operate its demand side management, energy conversation and self-generation business and general corporate purposes; (iv) to pay the costs of issuance of the New Notes and Bonds; and (v) to provide for debt servicing reserves or expenses for issuance of the New Notes and Bonds.

The terms and conditions of the New Notes and the Bonds will be provided in a post-effective amendment, the EUA and Cogenex request a reservation of jurisdiction over the issuance and sale of the New Notes and Bonds.

Interest on notes issued under the existing EUA system credit lines are either the prime rate or money market rates, and may include a commitment fee. The weighted average interest rate for borrowings under the EUA system credit lines on November 30, 1994, was 1% per annum. Notes issued under the EUA system credit lines will mature in not more than one year and the principal amount of notes that EUA and Cogenex will have outstanding at one time will not exceed $25 million and $75 million, respectively.

EUA also proposes, if it becomes necessary to obtain favorable terms for the New Notes and Bonds, to guaranty the New Notes and Bonds or provide an equity maintenance agreement, under which EUA would make capital contributions to Cogenex if Cogenex's equity as a percentage of total capitalization fell below a specified level.

Cogenex proposes to extend, until December 31, 1997, its authority to invest in Cogen-Canada and NEM, and Cogen-Canada and NEM propose to extend their authority to December 31, 1997, to borrow from Cogenex. Cogenex is currently authorized to invest in Cogen-Canada in an amount not to exceed $20 million through stock purchases, capital contribution, open account advances, and short-term loans. Cogenex is currently authorized to invest in NEM in an amount not to exceed $9.1 million through capital contributions and short-term loans. Cogenex's authority to invest, and NEM's and Cogen-Canada's authority to borrow from Cogenex expires December 31, 1995. Cogenex does not propose to increase the amount it may invest in Cogen-Canada or NEM.

National Fuel Gas Company, et al.

[70–8541]

National Fuel Gas Company (''National''), a registered holding company, and its wholly owned nonutility subsidiary companies, National Fuel Gas Resources (''Resources''), National Fuel Gas Supply (''Supply''), Seneca Resources Corporation (''Seneca), and Utility Constructors (''Constructors''), and National Fuel Gas Distribution Company (''Distribution''), a wholly owned gas public utility subsidiary company of National, all of 10 Lafayette Square, Buffalo, New York 14203, have filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rules 42, 43, and 45 thereunder.

National proposes to issue and sell, through December 31, 1997, in one or more transactions, up to an aggregate principal amount of $350 million of debt securities in any combination of (a) debentures (''Debentures'') and (b) medium-term notes (''MTNs''), which will mature in not over 40 years. The Debentures will be offered by use of negotiated sales or competitive bidding. The MTNs will be offered, as needed, through agents. National will not issue Debentures or MTNs at rates in excess of those generally obtained at the time of pricing for sales of medium-term notes or debentures having the same maturity, issued by companies of comparable credit quality and having similar terms, conditions, and features. The price and annual interest rate (which may be fixed or variable) of each series of Debentures and MTNs will be determined at the time of bidding or when the agreement to sell is made.

The Debentures and MTNs will be issued under an Indenture dated as of October 15, 1974, as supplemented, and as it will be supplemented by one or more supplemental indentures. The supplemental indentures, which provide for the issuance of the Debentures and the MTNs, may include provisions for redemption prior to maturity at various percentages of the principal amount and may include restrictions on optional redemption for a given number of years up to the term of the Debentures and MTNs.

National proposes to lend from the proposed financing, in exchange for unsecured notes (''Notes''), up to (a) $250 million to Distribution; (b) $150 million to Supply; (c) $150 million to Seneca; (d) $20 million to Resources; and (e) $20 million to Constructors. The total amount lent from National to the subsidiaries will not exceed the proceeds National receives from issuance of the Debentures and MTNs.

The Notes to be issued by the subsidiaries will bear interest at the effective interest cost of the principal amount of the related Debentures and MTNs. National will have the option to require payment of the notes at any time if the related Debentures and MTNs mature, are redeemed, or otherwise acquired by National. The subsidiaries will use the proceeds from the Notes: (i) To reduce short-term debt under certain credit lines; (ii) to repay notes issued to National in connection with the sale by National of certain debentures and medium-term notes; (iii) for construction or other capital expenditure programs; and (iv) for general corporate purposes.

National also proposes, in connection with its long-term financing, to enter

into one or more interest rate swaps and related interest rate caps, collars and floors, through December 31, 1997, in notional amounts that in the aggregate will not exceed $350 million.

National requests authorization to make floating-to-fixed rate (''Strategy 1 Swaps'') and fixed-to-floating rate swaps (''Strategy 2 Swaps''). Under Strategy 1 Swaps, National would make periodic interest payments at a floating rate of interest, calculated on an agreed notional amount, in return for periodic interest payments based upon the same notional amount but payable at an agreed-upon fixed rate of interest. Under Strategy 2 Swaps, National would pay a fixed interest rate and receive a variable interest rate on an agreed notional amount.

National's floating rate of interest for Strategy 1 Swaps would be based on certain indices, such as the London Interbank Deposit Offered Rate, the Federal Funds Rate, certificate of deposit indices, or commercial paper indices. There will be no maximum interest rate respecting payments that National may make under Strategy 1 Swaps unless National purchases an interest rate cap. However, National will not enter a Strategy 1 Swap in which the floating interest rate it pays would exceed by more than 200 basis points, at each reset period, the index used for the Strategy 1 Swap. The fixed interest National receives in a Strategy 1 Swap is calculated as that rate of interest that sets the net present value of the forward curve for the short-term index to zero, plus the bid/ask spread. Thus, the fixed rate chosen will be a rate that discounts the floating interest payments expected by the market to be paid by National over the life of the swap to an amount that equals the present value of the fixed interest payments to National, exclusive of the bid-ask spread.

To protect against adverse interest rate changes on floating rate debt, National may purchase one or more interest rate caps or may additionally sell an interest rate floor to either lower the cost of the debt under the floor or, in conjunction with an interest rate cap, to lower the cost of the cap.

National will not enter any Strategy 2 Swaps if the fixed rate of interest paid by National would exceed 2% over the yield on U.S. Treasury obligations bearing comparable terms. Strategy 2 Swaps would be used in lieu of issuing Debentures or MTNs. The aggregate notional amount of Strategy 2 Swaps will not, at any one time, exceed the difference between (a) $350 million and (b) the aggregate principal amount of Debentures and MTNs then outstanding. Furthermore, the aggregate notional amount of Strategy 2 Swaps will not exceed, at the time the swap contract is entered into, the difference between (a) the amount of short-term debt then outstanding pursuant to National's short-term borrowing arrangements (File No. 70–8297) (which shall not exceed $400 million) and b) the aggregation notional amount of swaps then outstanding pursuant to National's short-term borrowings and system Money Pool arrangements (File No. 70–8297). In no event will the aggregate notional amount of Strategy 2 Swaps, at any one time, exceed $350 million.

The term of Strategy 1 Swaps could vary from one month to forty years, while the term of Strategy 2 Swaps could vary from nine months to forty years.

Each time National issues debenture or medium-term notes, the proceeds are lent to one or more of its subsidiaries at an all-in cost that is equal to the coupon on the debt plus the amortization of the underwriters or agents' fees. Similarly each interest rate swap, cap, floor, or collar would ''directly relate'' to then outstanding debt so that the gains and losses of doing a swap and one or more derivative instruments would be allocated to the subsidiary on whose behalf the underlying debt was issued. The subsidiary will enter an agreement with National for the financial obligations of the swaps and other derivatives.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–2024 Filed 1–26–95; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before February 27, 1995. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3RD Street, SW., 5th Floor, Washington, DC 20416, telephone: (202) 205–6629.

OMB Reviewer: Donald Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: 8(a) Application Forms.

Form No.: SBA Forms 1010A, 1010B-Proprietorship, Partnership, Corporation, 1010C.

Frequency: On Occasion.

Description of Respondents: 8(a) Applicants.

Annual Responses: 11,000.

Annual Burden: 55,000.

Dated: January 19, 1995.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 95–2095 Filed 1–26–95; 8:45 am]

BILLING CODE 8025–01–M

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before February 27, 1995. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3rd Street, SW.,

5th Floor, Washington, DC 20416, telephone: (202) 205–6629.
OMB Reviewer: Donald Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.
Title: Portfolio Financial Report.
Form No.: SBA Form 1031.
Frequency: On Occasion.
Description of Respondents: Small Business Investment Companies.
Annual Responses: 2,100.
Annual Burden: 420.

Dated: December 20, 1994.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 95–2094 Filed 1–26–95; 8:45 am]

BILLING CODE 8025–01–M

Wood River Capital Corporation; Notice of License Surrender

[License #02/02–0361]

Notice is hereby given that Wood River Capital Corporation (''WRCC''), 667 Madison Avenue, New York, New York 20021, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (''the Act''). WRCC was licensed by the Small Business Administration on May 5, 1976.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on December 24, 1994, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: January 23, 1995.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 95–2096 Filed 1–26–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 95–004]

Differential Global Positioning System, Atlantic Intercoastal Region; Environmental Assessment

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability.

SUMMARY: The Coast Guard has prepared a Programmatic Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for implementing a Differential Global Positioning System (DGPS) Service in the Atlantic Intercoastal Region of the United States. The EA concluded that there will be no significant impact on the environment and that preparation of an Environmental Impact Statement will not be necessary. This notice announces the availability of the EA and FONSI and solicits comments on them.

DATES: Comments must be received on or before February 27, 1995.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

Copies of the EA and FONSI may be obtained by contacting LCDR George Privon at (202) 267–0297 or faxing a request at (202) 267–4427. A copy of the EA (less enclosures) is also available on the Electronic Bulletin Board System (BBS) at the Navigation Information Center (NIC) in Alexandria, VA, (703) 313–5910. For information on the BBS, call the NIC watchstander at (703) 313–5900.

FOR FURTHER INFORMATION CONTACT: LCDR George Privon, Radionavigation Division, (202) 267–0297.

SUPPLEMENTARY INFORMATION:

Request for Comments

Copies of the Programmatic Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) are available as described under **ADDRESSES**. The Coast Guard encourages interested persons to comment on these documents. The Coast Guard may revise these documents in view of the comments. If revisions are warranted, availability of the revised documents will be announced by a later notice in the **Federal Register**.

Background

As required by Congress, the Coast Guard is preparing to install the equipment necessary to implement a Differential Global Positioning System (DGPS) service in the Atlantic Intercoastal Corridor area of the United States. DGPS is a new radionavigation service that improves upon the 100 meter accuracy of the existing Global Positioning System (GPS) to provide an accuracy of better than 10 meters. For vessels, this degree of accuracy is critical for precise electronic navigation in harbors and harbor approaches and will reduce the number of vessel groundings, collisions, personal injuries, fatalities, and potential hazardous cargo spills resulting from such incidents.

After extensive study, the Coast Guard has selected five sites along the Atlantic Intercoastal Corridor coastline for the DGPS equipment. The sites are in the vicinity of Charleston, SC; Cape Henry, VA; Fort Macon, NC; Cape Canaveral, FL; and Miami, FL. The sites are already used for related purposes and were chosen, in part, because their proposed use is consistent with their past and present use, thus minimizing further impact on the environment. DGPS signal transmissions will be broadcast in the marine radiobeacon frequency band (283.5 to 325 KHz) using less than 50 watts (effective radiated power). Signal transmissions at these low frequency and power levels have not been found to be harmful to the surrounding environment.

Proposed Installations at Each Site

(a) Radiobeacon Antenna—The Coast Guard proposes to use an existing antenna or install a 90 foot guyed antenna with an accompanying ground plane for sites as follows:

At Cape Henry, VA, the existing antenna and ground plane will be used.
At Miami, FL, the existing 74 foot antenna and ground plane will be used.
At Cape Canaveral, FL, the existing ground plane will need to be upgraded and the 74 foot antenna will be replaced with a 90 foot model at the same location.
At Fort Macon, NC, and Charleston, SC the existing antenna and ground plane will be used.

A ground plane for these antennas consists of approximately 120 copper radials (6 gauge copper wire) installed 6 inches (or less) beneath the soil and projecting outward from the antenna base. The optimum radial length is 300 feet, but this length may be shortened to fit within property boundaries. Wherever possible, a very effective cable plow method will be utilized in the radial installation to minimize soil disturbance. Installation of the ground plane may first require some clearing of trees and bushes.

(b) DGPS Antennas—Each site will require two 10 foot masts to support four small (4 inches by 18 inches diameter) receiving antennas. The masts will be installed on concrete foundations. These masts are needed to support the primary and backup reference receivers and integrity monitors. The location of the two masts will be in the vicinity of the electronic equipment building or hut, but at least

50 feet to 100 feet from existing structures.

(c) Equipment shelter—DGPS transmitting equipment will be housed in existing equipment facilities with the possible exception of Fort Macon, NC, which may require upgrading the structure to hold the additional electronic equipment.

(d) Utilities—The Coast Guard proposes to use available commercial power as the primary source for the electronic equipment. A telephone line will be required at each site to allow for remote monitoring and operation.

Description of Each Site

Charleston, SC—The site is co-located at the Charleston Light Station, which is on Sullivans island.

Cape Canaveral, FL—Located approximately 10 miles Northeast of Cocoa Beach on the Cape Canaveral Air Force Station.

Miami, FL—Located approximately 12 miles Northeast of Coral Gables on the Virginia Key island.

Cape Henry, VA—This site is located on the Fort Story Military Reservation, which is adjacent to the Cape Henry Light. The light is listed on the National Register. The Coast Guard and VA SHPO agree the proposed project will have no adverse effect on the historic property. The radiobeacon equipment has already been partially upgraded and is transmitting prototype DGPS signals for test and evaluation purposes.

Fort Macon, NC—The site is co-located at the USCG Base Fort Macon, which is near the historic Fort Macon. The Coast Guard and NC SHPO agree that the proposed project will have no adverse effect on the historic property.

Implementation of a DGPS service in the Atlantic Intercoastal Regional is determined to have no significant effect on the quality of the human environment or require preparation of an Environmental Impact Statement.

Dated: January 19, 1995.

G.A. Penington,

Rear Admiral, U.S. Coast Guard Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 95–2093 Filed 1–26–95; 8:45 am]

BILLING CODE 4910–14–M

[CGD 95–006]

Discontinuance of Coast Guard High Frequency Morse Radiotelegraphy Services

AGENCY: Coast Guard, DOT.

ACTION: Notice of intent.

SUMMARY: the Coast guard intends to discontinue all high frequency Morse (HFCW) radiotelegraph services. More effective means of communication are now in use, and vessels in maritime areas over which the United States exercises responsibility for search and rescue no longer rely on HFCW radiotelegraphy as a primary means of communication.

DATES: All Coast Guard HFCW radiotelegraphy services will be discontinued on April 1, 1995.

FOR FURTHER INFORMATION CONTACT: Lieutenant Adolph Keyes, Chief, Telecommunications Policy Section (G–TTM), Office of Command, Control and Communication, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001, telephone (202) 267–6598, telefax (202) 267–4617, or telex 892427 (COASTGUARD WASH). Normal office hours are between 7 a.m. and 3:30 p.m. (EST), Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: Since 1959, the Coast Guard has used high frequency Morse radiotelegraphy (HFCW) to communicate with government and merchant ships, primarily to broadcast safety, warnings and navigation information, receive position and meteorological reports from ships, and to communicate with ships at sea reporting a distress alert or medical or vessel emergency.

The Global Maritime Distress and Safety System (GMDSS) amendments to the Safety of Life at Sea (SOLAS) Convention were adopted in 1988 and initial provisions entered into force in February, 1992. GMDSS methods provide the mariner with improved means for initiating or relaying distress alerts, and receiving safety information pertinent to its area of operation. Components of the GMDSS now available include navigational telex (NAVTEX), simplex teletype over radio (SITOR), emergency position indicating radio beacons (EPIRB), search and rescue radar transponders (SARTS) and International Maritime Satellite (INMARSAT). NAVTEX, SITOR and INMARSAT's SafetyNet provide the mariner with the same components of information the Coast Guard currently broadcasts over high frequency Morse (HFCW) radiotelegraphy. Government and merchant vessels no longer rely on high frequency Morse (HFCW) radiotelegraphy as their primary means of safety radiocommunications when operating within maritime areas, where the United States exercises responsibility for search and rescue and navigational safety.

U.S. commercial coast radio stations provide adequate radio frequency and time of day coverage of maritime areas to ensure a high probability of reception of distress and safety alerts. Provisions exist under the Communications Act for prompt processing of distress and safety messages and forwarding to the appropriate U.S. Coast Guard rescue coordination center.

The U.S. Coast guard will continue to provide HF SITOR service from Communication Stations Kodiak (NOJ), Honolulu (NMO), and Guam (NRV), and Communications Area Master Stations San Francisco (NMC) and Portsmouth (NMN). Additionally, government and merchant vessels can contact designated commercial coast radio stations on HFCW to pass safety, medical emergency and Automated-Mutual Assistance Vessel Rescue (AMVER) reports to the Coast Guard at no cost to the originator. More information concerning Coast Guard distress and safety radio circuits can be obtained from the Coast Guard Navigation Information Service computer bulletin board, accessible by modem at (703) 313–5910, or by Internet from 'Telnet fedworld.gov'.

The Coast Guard believes the current implemented provisions of GMDSS and commercial coast radio station operating Morse telegraphy services (HFCW) within the high frequency bands are sufficient to ensure distress and safety communication services. Therefore, effective 1 April 1995, the Coast Guard proposes to cease all high frequency Morse (HFCW) radiotelegraphy services currently operated from Coast Guard Communication Stations Kodiak, Honolulu, and Guam, and Communications Area Master Stations San Francisco and Portsmouth.

Dated: January 13, 1995.

D.E. Ciancaglini,

Rear Admiral, U.S. Coast Guard, Chief, Office of Command, Control and Communications.

[FR Doc. 95–2092 Filed 1–26–95; 8:45 am]

BILLING CODE 4910–14–M

[CGD 95–005]

Area To Be Avoided Off the Washington Coast

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting; request for comments.

SUMMARY: The Coast Guard will conduct a public meeting to obtain information on whether the applicability of an area to be avoided (ATBA) off the Washington Coast should be expanded to include vessels and barges other than those carrying cargoes of oil or hazardous materials.

DATES: The meeting will be held February 23, 1995, from 9:00 a.m. until the last speaker is heard. Written comments must be received not later than March 3, 1995.

ADDRESSES: The meeting will be held in the North Auditorium on the fourth floor of the Federal Building, 915 Second Avenue, Seattle, WA 98174. Written comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA), U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments will become part of this docket and will be available for inspection or copying at room 3406, Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday, through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Margie G. Hegy, Project Manager, Vessel Traffic Services Division, phone (202) 267–0415. This telephone is equipped to take messages on a 24-hour basis.

SUPPLEMENTARY INFORMATION: An ATBA is a defined area that all ships or certain classes of ships are encouraged to avoid because navigation is particularly hazardous or it is exceptionally important to avoid casualties within the area. On December 7, 1994, the Maritime Safety Committee of the International Maritime Organization adopted an ATBA proposed by the U.S. off the Washington coast in the vicinity of the Olympic Coast National Marine Sanctuary. The ATBA will go into effect on June 7, 1995.

In order to reduce the risk of marine casualty and resulting pollution and damage to the environment of the Olympic Coast National Marine Sanctuary, all vessels, including barges, carrying cargoes classified by the United States as hazardous materials (e.g., oil or chemicals) should avoid the area bounded by a line connecting the following points:

Latitude	Longitude
(1) 48°23.3′N	124°38.2′ W
(2) 48°23.5′N	124°38.2′ W
(3) 48°25.3′N	124°46.9′ W
(4) 47°51.7′N	125°15.5′ W
(5) 47°07.7′N	124°47.5′ W
(6) 47°07.7′N	124°11.0′ W

Because of concerns raised shortly before IMO considered the U.S. proposal, the U.S. delegation informed the Committee that the issue of spending this ATBA to include other categories of commercial vessels would be considered further at the national level and, if appropriate, an amendment would be submitted for IMO consideration. This meeting will give the public an opportunity to provide information and documentation as we reconsider this issue.

In addition to information you wish to provide, the Coast Guard is also interested in your response to the following questions:

1. What interest or industry group do you represent?
2. If an Agent, do you represent U.S. or foreign flag vessels?
3. Do you currently own, operate, or charter commercial vessels that have occasion to operate within the Marine Sanctuary? If yes, please describe number, type, length, gross tons, amounts of bunker fuel carried, and type/quantity of cargo.
4. What measure (e.g., length, gross tonnage, barrels of product and/or bunker carried) do you recommend be used to establish applicability for the ATBA? Why?
5. Are there products/cargo other than petroleum that should be included in the applicability? If so, why and how should they be classified/identified? What threat do they pose to the sanctuary resources?
6. It has been suggested that the applicability of the ATBA be expanded to include all vessels greater than 500 gross tons regardless of the quantity or type of cargo carried. What impact (e.g., economic, extra steaming time, safety) would this have on your business/industry?
7. If you have a specific proposal to expand the applicability, quantify the benefit to the environment that would result. What is your proposal based on? Why should these vessels be included?
8. How many vessels (or vessel transits) per year are potentially affected by the current ATBA applicability? How many by expanding the applicability to include the vessels as suggested in number 6 or 7 above?
9. Prior to creation of the ATBA, where have your vessels historically transited during coastal transits (i.e., how many miles offshore)? If you call on a coastal port within the Sanctuary, describe your approach/track line to the port.
10. Are there industry or company policies which establish vessel routes? If so, what are they?

Attendance is open to the public. With advance notice, and as time permits, members of the public may make oral presentations during the meeting. Persons wishing to make oral presentations should notify the person listed above under **FOR FURTHER INFORMATION CONTACT** no later than two days before the meeting. Written material may be submitted prior to, during, or after the meeting.

Dated: January 23, 1995.

G.A. Penington,

Rear Admiral, U.S. Coast Guard Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 95–2091 Filed 1–26–95; 8:45 am]

BILLING CODE 4910–14–M

National Highway Traffic Safety Administration

[Docket No. 94–93; Notice 2]

Decision That Nonconforming 1992 Mercedes-Benz 260E Passenger Cars are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1992 Mercedes-Benz 260E passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1992 Mercedes-Benz 260E passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the 1992 Mercedes-Benz 300E), and they are capable of being readily altered to conform to the standards.

DATES: The decision is effective on January 27, 1995.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION: 1992 Mercedes-Benz 300E.

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the

model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

Champagne Imports, Inc. of Lansdale, Pennsylvania (Registered Importer R–90–009) petitioned NHTSA to decide whether 1992 Mercedes-Benz 260E passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on December 6, 1994 (59 FR 62778) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP 105 is the vehicle eligibility number assigned to vehicles admissible under this notice of final decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that a 1992 Mercedes-Benz 260E (Model ID 124.026) is substantially similar to a 1992 Mercedes-Benz 300E originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. 30115, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 23, 1995.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 95–2064 Filed 1–26–95; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

January 18, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of the Public Debt (BPD)

OMB Number: 1535–0111.
Form Number: SBD 2090.
Type of Review: Extension.
Title: Authorization for Purchase and Request for Change United States Series EE Savings Bonds.
Description: This form is used to authorize employers to allot funds from employees' pay for the purchase of Savings Bonds.
Respondents: Individuals or households, State or local governments, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.
Estimated Number of Respondents: 1,600,000.
Estimated Burden Hours Per Response: 7 minutes, 30 seconds.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 33,333 hours.
Clearance Officer: Vicki S. Ott, (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328.
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–2028 Filed 1–26–95; 8:45 am]

BILLING CODE 4810–40–P

Public Information Collection Requirements Submitted to OMB for Review

January 18, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0135.
Form Number: IRS Form 1138.
Type of Review: Extension.
Title: Extension of Time for Payment of Taxes by a Corporation Expecting a Net Operating Loss Carryback.
Description: Form 1138 is filed by corporations to request an extension of time to pay their income taxes, including estimated taxes. Corporations may only file for an extension when they expect a net operating loss carryback in the tax year and want to delay the payment of taxes from a prior tax year.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents/ Recordkeepers: 2,033.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—3 hr., 21 min.
Learning about the law or the form—35 min.
Preparing and sending the form to the IRS—41 min.
Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 9,392 hours.
OMB Number: 1545–0906.
Form Number: IRS Form 8362.
Type of Review: Revision.
Title: Currency Transaction Report by Casinos.
Description: Casinos have to report currency transactions of more than $10,000 within 15 days of the transaction. A casino is defined as one licensed by a State or local government having gross annual gaming revenue in excess of $1,000,000.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents/ Recordkeepers: 30,000.

Estimated Burden Hours Per Respondent/Recordkeeper: 47 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 18,360 hours.
OMB Number: 1545–1163.
Form Number: IRS Form 8822.
Type of Review: Extension.
Title: Change of Address.
Description: Form 8822 is used by taxpayers to inform IRS of their change of address. IRS will use this information to update the taxpayer's address of record.
Respondents: Individuals or households, Businesses of other for-profit, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Governments.
Estimated Number of Respondents/ Recordkeepers: 1,500,000.
Estimated Burden Hours Per Respondent/Recordkeeper: 16 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 387,501 hours.
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–2029 Filed 1–26–95; 8:45 am]

BILLING CODE 4830–01–P

Customs Service

[ADM–9–03:CO:R:IT:R 912545 FF]

Filing of Contracts and Certifications Covering Textile and Apparel Products Under Section 334 of the Uruguay Round Agreements Act

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This document advises the public of the requirements and procedures that must be followed in filing contracts and certifications with Customs in order to preclude application of new origin principles to textile and apparel products entered, or withdrawn from warehouse, for consumption during the period of July 1, 1996 through January 1, 1998, as provided in section 334 of the Uruguay Round Agreements Act (the Act). If a contract and certification are not filed with Customs in accordance with the procedures set forth in this document, such textile and apparel products will be subject to the origin principles contained in section 334(b) of the Act.

DATES: Contracts and certifications must be filed with Customs on or before February 6, 1995.

ADDRESSES: Contracts and certifications must be filed with the Director, Office of Trade Operations, Attention: Lisa Crosby, Room 1325, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Lisa Crosby, Office of Trade Operations (202–927–0163).

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1994, President Clinton signed into law the Uruguay Round Agreements Act (the Act), Public Law 103–465, 108 Stat. 4809. Subtitle D of Title III of the Act deals with textiles and includes section 334 which concerns rules of origin for textile and apparel products.

Paragraph (a) of section 334 provides that the Secretary of the Treasury shall prescribe rules implementing the principles contained in paragraph (b) for determining the origin of textiles and apparel products. Paragraph (a) further provides that such rules must be promulgated in final form not later than July 1, 1995.

Paragraph (b) of section 334 incorporates the following provisions: (1) General rules for determining when, for purposes of the customs laws and the administration of quantitative restrictions, a textile or apparel product originates in a country, territory, or insular possession, and is the growth, product, or manufacture of that country, territory, or insular possession; (2) special origin rules for certain identified goods; (3) a multicountry rule for determining origin when the origin of a good cannot be determined under the preceding provisions of paragraph (b); (4) special rules governing the treatment of components which are cut to shape in the United States from foreign fabric or are products of the United States and which are exported for assembly and returned to the United States; and (5) an exception to the application of section 334 in the case of the United States-Israel Free Trade Agreement, which specifically provides for the continued application of the rulings and administrative practices that were applied, immediately before the enactment of the Act, to determine the origin of textile and apparel products covered by that Agreement, unless such rulings and practices are modified by the mutual consent of the United States and Israel.

Paragraph (c) of section 334 provides that section 334 shall apply to goods entered, or withdrawn from warehouse, for consumption on or after July 1, 1996. However, paragraph (c) further provides that section 334 shall not apply to goods if:

(1) The contract for the sale of such goods to the United States is entered into before July 20, 1994;

(2) All of the material terms of sale in such contract, including the price and quantity of the goods, are fixed and determinable before July 20, 1994;

(3) A copy of the contract is filed with the Commissioner of Customs within 60 days after the date of the enactment of the Act, together with a certification that the contract meets the requirements of paragraphs (1) and (2) above; and

(4) The goods are entered, or withdrawn from warehouse, for consumption on or before January 1, 1998.

Paragraph (c) was included in section 334 in recognition of the fact that application of the origin principles contained in paragraph (b) may result in origin determinations that are different from the result that would have been reached under prior law and administrative practice, thus causing undue hardship to persons who had already entered into binding contracts based on existing law and administrative practice.

Since the required rules implementing the principles of paragraph (b) of section 334 are currently at the pre-publication stage and thus are not available for reference, members of the public must refer to the provisions as contained in paragraph (b) of the statute in order to assess the need for filing a contract and certification with Customs as provided for in paragraph (c). The procedures applicable to the filing of such contracts and certifications are set forth below.

Procedures for Filing Contracts and Certifications

A legible and complete copy of each contract, together with the required certification signed by the U.S. party to the contract or authorized officer or agent thereof, must be filed with the Director, Office of Trade Operations, Attention: Lisa Crosby, Room 1325, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229, on or before February 6, 1995. Customs will provide written confirmation of each timely filing within five working days of the date of receipt of the filed documents. Contracts and certifications

which are submitted by mail or courier service and which are received by Customs after February 6, 1995, will not be considered to have been timely filed unless they reflect a postmark or other date of transmission of February 6, 1995, or earlier. If a contract and certification which otherwise meet the terms of section 334(c) of the Act are not filed with Customs in accordance with the procedures set forth herein, the textile and apparel products covered by the contract will be subject to the origin principles contained in section 334(b) of the Act.

Following review of each contract and certification, Customs will determine whether the filed documents meet the requirements of paragraph (c) of section 334 and will provide written notice to the filing party regarding that determination. A separate notice will be published at an appropriate future date regarding the entry or other procedures to be followed for the period of July 1, 1996 through January 1, 1998, in the case of goods covered by contracts found by Customs to meet the requirements of paragraph (c) of section 334.

Dated: January 24, 1995.

A.W. Tennant,

Acting Assistant Commissioner, Office of Field Operations

[FR Doc. 95–2140 Filed 1–24–95; 4:34 pm]

BILLING CODE 4820–02–P

Sunshine Act Meetings

Federal Register
Vol. 60, No. 18
Friday, January 27, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the ''Government in the Sunshine Act'' (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, February 3, 1995.
PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Surveillance Matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 95–2159 Filed 1–25–95; 10:49 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, February 10, 1995.
PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Surveillance matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 95–2160 Filed 1–25–95; 10:49 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, February 17, 1995.
PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Surveillance Matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 95–2161 Filed 1–25–95; 10:49 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11 a.m., Friday, February 24, 1995.
PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Surveillance Matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A Webb,
Secretary of the Commission.
[FR Doc. 95–2162 Filed 1–25–95; 10:49 am]
BILLING CODE 6351–01–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Amendment to Sunshine Act Meeting

SUMMARY: Pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), the Farm Credit Administration gave notice on January 10, 1995 (60 FR 2625) of the regular meeting of the Farm Credit Administration Board (Board) scheduled for January 12, 1995. This notice is to amend the agenda by removing an item from the open session of that meeting.
FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Acting Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.
ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.
SUPPLEMENTARY INFORMATION: This meeting of the Board was open to the public (limited space available). The open session of the agenda for January 12, 1995, is amended as follows:

Open Session

B. Reports

1. COO's First Quarter FY 1995 Report

a. Derivatives Workgroup Report.
b. Capital Workgroup Report.

Dated: January 23, 1995.

Floyd Fithian,
Acting Secretary, Farm Credit Administration Board.
[FR Doc. 95–2251 Filed 1–25–95; 2:59 am]
BILLING CODE 6705–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:05 a.m. on Tuesday, January 24, 1995, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate and supervisory activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Director Eugene A. Ludwig (Comptroller of the Currency), and Chairman Ricki Tigert Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: January 24, 1995.

Federal Deposit Insurance Corporation.

Leneta G. Gregorie,
Acting Assistant Executive Secretary.
[FR Doc. 95–2155 Filed 1–25–94; 10:19 am]
BILLING CODE 6714–0–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, January 31, 1995, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Amendments to an Existing Privacy Act System of Records (Consumer Complaint and Inquiry System), which would update language describing the system location, categories of records in the system, etc., necessitated by a recent reorganization within the Corporation; and a proposal for the delegation of authority to the Executive Secretary to authorize minor amendments to existing Privacy Act systems of records.

Memorandum and resolution re: Establishment of a New System of Records (Unclaimed Deposits Reporting System) which would consist of records relating to unclaimed insured or transferred deposits from closed insured depository institutions for which the Corporation was appointed receiver after January 1, 1989.

Memorandum re: January 1995 Funding Request: Financing Corporation (FICO) Assessment.

Discussion Agenda

Memorandum and resolution re: Proposed amendments to Parts 327 and 304 of the Corporation's rules and regulations, entitled ''Assessments'' and ''Forms, Instructions, and Reports,'' respectively, which would establish a new assessment rate schedule for Bank Insurance Fund members.

Memorandum re: Issuance of a General Counsel Opinion regarding the treatment of assessments paid by members of the Bank Insurance Fund on deposits acquired from members of the Savings Association Insurance Fund.

Memorandum re: Semiannual review of the recapitalization of the Savings Association Insurance Fund and the setting of assessment rates.

Memorandum and Resolution re: Proposed amendments to Part 363 of the Corporation's rules and regulations, entitled ''Annual Independent Audits and Reporting Requirements,'' in order to conform the rule with the Riegle Community Development and Regulatory Improvement Act of 1994.

Memorandum and resolution re: Proposed amendments to Part 344 of the Corporation's rules and regulations, entitled ''Recordkeeping and Confirmation Requirements for Securities Transactions,'' which would provide for express waiver of the requirement that insured state nonmember banks disclose the amount of remuneration received in connection with securities transactions involving third party brokerage networking arrangements.

Memorandum and Resolution re: Final amendment to Part 330 of the Corporation's rules and regulations, entitled ''Disclosure of Capital Condition,'' requiring institutions to disclose capital condition to depositors of employee benefit plan funds, which affects the availability of pass-through insurance for employee benefit plan deposits, and other technical amendments.

Memorandum and Resolution re: Proposed amendments to Part 325 of the Corporation's rules and regulations, entitled ''Capital Maintenance,'' which would modify the definition of the Organization for Economic Cooperation and Development-based group of countries.

Memorandum and Resolution re: Final amendments to Part 325 of the Corporation's rules and regulations, entitled ''Capital Maintenance,'' which establish a limitation on the amount of certain deferred tax assets that may be included in Tier 1 capital of insured state nonmember banks for risk-based and leverage capital purposes.

Memorandum and Resolution re: Notice of withdrawal of proposed amendments to Part 348 of the Corporation's rules and regulations, entitled ''Management Official Interlocks,'' which would have created certain limited exceptions to the prohibition on management official interlocks for depository institutions.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 942–3132 (Voice); (202) 942–3111 (TTY), to make necessary arrangements.

Request for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Acting Executive Secretary of the Corporation, at (202) 898–6757.

Dated: January 24, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 95–2156 Filed 1–25–95; 10:19 am]

BILLING CODE 6714–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10 a.m., Thursday, January 26, 1995.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. General meeting to determine current status of pending cases.

No earlier announcement of the addition of this matter to the previously scheduled meeting was possible. It was determined by a unanimous vote of the Commissioners that these matters be discussed in closed session.

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Dated: January 23, 1995.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 95–2250 Filed 1–25–95; 2:59 pm]

BILLING CODE 6735–01–M

Corrections

Federal Register
Vol. 60, No. 18
Friday, January 27, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 658

[Docket No. 940846-4348; I.D. 080194C]

RIN 0648-AF83

Foreign Fishing; Shrimp Fishery of the Gulf of Mexico

Correction

In rule document 94–31770 beginning on page 66787, in the issue of Wednesday, December 28, 1994, make the following corrections:

§658.25 [Corrected]

1.On page 66792, in the third column, in §658.25, in the table, the column entitled ''W'' should be a subheading under the heading ''Loran Chain 7980''.

2.On the same page, in the same column, in §658.25, after the table, in footnote 2, ''[2] AAAA2 Long Pt. (southwest tip).'' should read ''[2] Long Pt. (southwest tip).''

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

28 CFR Part 36

Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities

Correction

In the CFR correction appearing on page 3080 in the issue of Friday, January 13, 1995, the subject heading should read as set forth above.

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Controlling Drug Abuse by Federal Parolees

Correction

In rule document 94–31976 beginning on page 66734 in the issue of Wednesday, December 28, 1994, make the following corrections:

§ 2.40 [Corrected]

On page 66735, in the first column, in amendatory instruction 2 for § 2.40, in the second line and in the second line of the section, the paragraph designation ''(R)'' should read ''(k)''.

BILLING CODE 1505–01–D

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 870, 871, 872, 873, 874, and 890

RIN 3206-AF94

Federal Employees' Group Life Insurance and Federal Employees Health Benefits Programs; Reconsideration of Employing Office Enrollment Decisions

Correction

In rule document 94–31643 beginning on page 66434 in the issue of Tuesday, December 27, 1994, the CFR heading should appear as set forth above.

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240

[Release No. 34-35123; File No. S7-17-94]
RIN 3235-AG15

Proposed Rule Changes of Self Regulatory Organizations; Annual Filing of Amendments to Registration Statements of National Securities Exchanges, Securities Associations, and Reports of the Municipal Securities Rulemaking Board

Correction

In rule document 94–31657 beginning on page 66692 in the issue of Wednesday, December 28, 1994, make the following correction:

§240.6a-2 [Corrected]

On page 66700, in the first column, the heading for amendatory instruction 4. should read as set forth above.

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 156

[CGD 93-081]
RIN 2115-AE90

Designation of Lightering Zones

Correction

In proposed rule document 95–947 beginning on page 3185 in the issue of Friday, January 13, 1995, make the following correction:

1. On page 3186, in the first column, under **SUPPLEMENTARY INFORMATION:**, in the first paragraph, in the third line, ''zoned'' should read ''zones''.

2. On the same page, in the second column, in the second full paragraph, in the fourth line, ''June 20,'' should read ''June 30,''.

BILLING CODE 1505–01–D

Federal Register

Friday
January 27, 1995

Part II

Environmental Protection Agency

40 CFR Part 437

Centralized Waste Treatment Category, Effluent Limitations Guidelines; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 437

[FRL–5126–9]

RIN 2040–AB78

Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards: Centralized Waste Treatment Category

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This proposed regulation would establish technology-based limits for the discharge of pollutants into navigable waters of the United States and into publicly-owned treatment works by existing and new facilities that receive industrial waste from off-site for treatment or recovery. This regulation will reduce the discharge of pollutants by at least 123 million pounds per year, reducing excursions of aquatic life and/or human health toxic effect levels in thirty waterbodies. As a result of consultation with stakeholders, the preamble solicits comments and data not only on issues raised by EPA, but also on those raised by State and local governments who will be implementing these regulations and by industry representatives who will be affected by them.

DATES: Comments on the proposal must be received by April 27, 1995.

In addition, EPA will conduct a workshop covering this rulemaking, in conjunction with a public hearing on the pretreatment standards portion of the rule. The workshop will be held on March 24, 1995, from 8:30 a.m. to 10:30 a.m. The public hearing will be conducted from 11 a.m. to 1 p.m.

ADDRESSES: Send comments on this proposal to Ms. Debra DiCianna, Engineering and Analysis Division (4303), 911 East Tower, U.S. EPA, 401 M Street SW, Washington, DC 20460. The public record is in the Water Docket located in the basement of the EPA Headquarters building, Room L102, 401 M Street SW, Washington, DC 20460, telephone number (202) 260–3027. The Docket staff requests that interested parties call for an appointment between the hours of 9 am and 3:30 pm, before visiting the docket. The EPA regulations at 40 CFR Part 2 provide that a reasonable fee may be charged for copying.

The workshop and public hearing covering the rulemaking will be held in the Lake Michigan Conference Room at the U.S. EPA Region V Building, 77 West Jackson Boulevard, Chicago, IL. Persons wishing to present formal comments at the public hearing should have a written copy for submittal.

FOR FURTHER INFORMATION CONTACT: For additional technical information contact Ms. Debra DiCianna at (202) 260–7141. Additional economic information may be obtained by contacting Ms. Susan M. Burris at (202) 260–5379. Background documents supporting the proposed regulations are described in the ''Background Documents'' section below. Many of the documents are also available from the Office of Water Resource Center, RC–4100, U.S. EPA, 401 M Street SW., Washington, DC 20460; telephone (202) 260–7786 for the voice mail publication request line.

SUPPLEMENTARY INFORMATION:

Overview

The preamble describes the definitions, acronyms, and abbreviations used in this notice; the background documents that support these proposed regulations; the legal authority of these rules; a summary of the proposal; background information; and the technical and economic methodologies used by the Agency to develop these regulations. This preamble also solicits comment and data on specific areas of interest.

Organization of This Document

Definitions, Acronyms, and Abbreviations

Administrator—The Administrator of the U.S. Environmental Protection Agency.

Agency—The U.S. Environmental Protection Agency.

Average monthly discharge limitation—The highest allowable average of ''daily discharges'' over a calendar month, calculated as the sum of all ''daily discharges'' measured during the calendar month divided by the number of ''daily discharges'' measured during the month.

BAT—The best available technology economically achievable, as described in Sec. 304(b)(2) of the CWA.

BCT—The best conventional pollutant control technology, as described in Sec. 304(b)(4) of the CWA.

BOD_5—Biochemical oxygen demand—Five Day. A measure of biochemical decomposition of organic matter in a water sample. It is determined by measuring the dissolved oxygen consumed by microorganisms to oxidize the organic contaminants in a water sample under standard laboratory conditions of five days and 70 °C. BOD_5 is not related to the oxygen requirements in chemical combustion.

BPT—The best practicable control technology currently available, as described in Sec. 304(b)(1) of the CWA.

Centralized waste treatment facility—Any facility that treats any hazardous or non-hazardous industrial wastes received from off-site by tanker truck, trailer/roll-off bins, drums, barge, or other forms of shipment. A ''centralized waste treatment facility'' includes (1) a facility that treats waste received from off-site exclusively and (2) a facility that

treats wastes generated on-site as well as waste received from off-site.

Centralized waste treatment wastewater—Water that comes in contact with wastes received from off-site for treatment or recovery or that comes in contact with the area in which the off-site wastes are received, stored or collected.

Clarifier—A treatment unit designed to remove suspended materials from wastewater—typically by sedimentation.

COD—Chemical oxygen demand. A bulk parameter that measures the oxygen-consuming capacity of refractory organic and inorganic matter present in water or wastewater. COD is expressed as the amount of oxygen consumed from a chemical oxidant in a specific test.

Commercial facility—Facilities that accept waste from off-site for treatment from facilities not under the same ownership as their facility.

Conventional pollutants—The pollutants identified in Sec. 304(a)(4) of the CWA and the regulations thereunder (biochemical oxygen demand (BOD_5), total suspended solids (TSS), oil and grease, fecal coliform, and pH).

CWA—Clean Water Act. The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 et seq.), as amended, inter alia, by the Clean Water Act of 1977 (Public Law 95–217) and the Water Quality Act of 1987 (Public Law 100–4). CWT—Centralized Waste Treatment.

Daily discharge—The discharge of a pollutant measured during any calendar day or any 24-hour period that reasonably represents a calendar day.

Direct discharger—A facility that discharges or may discharge treated or untreated pollutants into waters of the United States.

Effluent—Wastewater discharges.

Effluent limitation—Any restriction, including schedules of compliance, established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean. (CWA Sections 301(b) and 304(b).)

EIA—Economic Impact Analysis.

EPA—The U.S. Environmental Protection Agency.

Facility—A facility is all contiguous property owned, operated, leased or under the control of the same person. The contiguous property may be divided by public or private right-of-way.

Fuel Blending—The process of mixing organic waste for the purpose of generating a fuel for reuse.

Indirect discharger—A facility that discharges or may discharge pollutants into a publicly-owned treatment works.

LTA—Long-term average. For purposes of the effluent guidelines, average pollutant levels achieved over a period of time by a facility, subcategory, or technology option. LTAs were used in developing the limitations and standards in today's proposed regulation.

Metal-bearing wastes—Wastes that contain metal pollutants from manufacturing or processing facilities or other commercial operations. These wastes may include, but are not limited to, the following: process wastewater, process residuals such as tank bottoms or stills and process wastewater treatment residuals, such as treatment sludges.

Minimum level—The level at which an analytical system gives recognizable signals and an acceptable calibration point.

Mixed Commercial/Non-commercial facility—Facilities that accept some waste from off-site for treatment from facilities not under the same ownership, and some waste from off-site for treatment from facilities under the same ownership as their facility.

New Source—''New source'' is defined at 40 CFR 122.2 and 122.29.

Non-commercial facility—Facilities that accept waste from off-site for treatment only from facilities under the same ownership as their facility.

Non-conventional pollutants—Pollutants that are neither conventional pollutants nor priority pollutants listed at 40 CFR Section 401.

Non-detect value—A concentration-based measurement reported below the sample specific detection limit that can reliably be measured by the analytical method for the pollutant.

Non-water quality environmental impact—An environmental impact of a control or treatment technology, other than to surface waters.

NPDES—The National Pollutant Discharge Elimination System authorized under Sec. 402 of the CWA. NPDES requires permits for discharge of pollutants from any point source into waters of the United States.

NSPS—New Source Performance Standards.

OCPSF—Organic Chemicals, Plastics, and Synthetic Fibers Manufacturing Effluent Guideline.

Off-Site—''Off-site'' means outside the boundaries of a facility.

Oily Wastes—Wastes that contain oil and grease from manufacturing or processing facilities or other commercial operations. These wastes may include, but are not limited to, the following: spent lubricants, cleaning fluids, process wastewater, process residuals such as tank bottoms or stills and process wastewater treatment residuals, such as treatment sludges.

Oligopoly—A market structure with few competitors, in which each producer is aware of his competitors' actions and has a significant influence on market price and quantity.

On-site—''On-site'' means within the boundaries of a facility.

Organic-bearing Wastes—Wastes that contain organic pollutants from manufacturing or processing facilities or other commercial operations. These wastes may include, but are not limited to, process wastewater, process residuals such as tank bottoms or stills and process wastewater treatment residuals, such as treatment sludges.

Outfall—The mouth of conduit drains and other conduits from which a facility effluent discharges into receiving waters.

Pipeline—''Pipeline'' means an open or closed conduit used for the conveyance of material. A pipeline includes a channel, pipe, tube, trench or ditch.

Point source category—A category of sources of water pollutants.

Pollutant (to water)—Dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, certain radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.

POTW or POTWs—Publicly-owned treatment works, as defined at 40 CFR 403.3(0).

Pretreatment standard—A regulation that establishes industrial wastewater effluent quality required for discharge to a POTW. (CWA Section 307(b).)

Priority pollutants—The pollutants designated by EPA as priority in 40 CFR part 423, appendix A.

Process wastewater—''Process wastewater'' is defined at 40 CFR 122.2.

PSES—Pretreatment standards for existing sources of indirect discharges, under Sec. 307(b) of the CWA.

PSNS—Pretreatment standards for new sources of indirect discharges, under Sec. 307 (b) and (c) of the CWA.

RCRA—Resource Conservation and Recovery Act (PL 94–580) of 1976, as amended.

SIC—Standard Industrial Classification (SIC). A numerical categorization system used by the U.S. Department of Commerce to catalogue economic activity. SIC codes refer to the products, or group of products, produced or distributed, or to services

rendered by an operating establishment. SIC codes are used to group establishments by the economic activities in which they are engaged. SIC codes often denote a facility's primary, secondary, tertiary, etc. economic activities.

Small business—Businesses with annual sales revenues less than $6 million. This is the Small Business Administration definition of small business for SIC code 4953, Refuse Systems (13 CFR Ch.1, § 121.601).

Solidification—The addition of agents to convert liquid or semi-liquid hazardous waste to a solid before burial to reduce the leaching of the waste material and the possible migration of the waste or its constituent from the facility. The process is usually accompanied by stabilization.

Stabilization—A hazardous waste process that decreases the mobility of waste constituents by means other than solidification. Stabilization techniques include mixing the waste with sorbents such as fly ash to remove free liquids. For the purpose of this rule, chemical precipitation is not a technique for stabilization.

TSS—Total Suspended Solids. A measure of the amount of particulate matter that is suspended in a water sample. The measure is obtained by filtering a water sample of known volume. The particulate material retained on the filter is then dried and weighed.

Variability factor—The daily variability factor is the ratio of the estimated 99th percentile of the distribution of daily values divided by the expected value, median or mean, of the distribution of the daily data. The monthly variability factor is the estimated 95th percentile of the distribution of the monthly averages of the data divided by the expected value of the monthly averages.

Waste Receipt—Wastes received for treatment or recovery. Waters of the United States—The same meaning set forth in 40 CFR 122.2.

Zero discharge—No discharge of pollutants to waters of the United States or to a POTW. Also included in this definition are discharge of pollutants by way of evaporation, deep-well injection, off-site transfer, and land application.

Background Documents

The regulations proposed today are supported by several major documents. (1) EPA's technical conclusions concerning the wastewater regulations are detailed in the ''Development Document for Proposed Effluent Limitations Guidelines and Standards for the Centralized Waste Treatment Industry,'' hereafter referred to as the Technical Development Document (EPA–821–R–95–006). (2) Detailed documentation of the procedure and equations used for costing the technology options is included in the ''Detailed Costing Document for the Centralized Waste Treatment Industry,'' hereafter referred to as the Costing Document (EPA–821–R–95–002). (3) The Agency's economic analysis is found in the ''Economic Impact Analysis of Proposed Effluent Limitations Guidelines and Standards for the Centralized Waste Treatment Industry,'' hereafter called the Economic Impact Analysis (EPA–821–R–95–001). (4) The Agency's assessment of environmental benefits is detailed in the ''Environmental Assessment of Proposed Effluent Guidelines for the Centralized Waste Treatment Industry,'' hereafter called the Environmental Assessment (EPA–821–R–95–003). (5) An analysis of the incremental costs and pollutant removals for the effluent regulations is presented in ''Cost-Effectiveness Analysis of Proposed Effluent Limitations Guidelines and Standards for the Centralized Waste Treatment Industry,'' hereafter called the Cost-Effectiveness Analysis (EPA–821–R–95–004). (6) The methodology used for calculating limitations is discussed in the ''Statistical Support Document for Proposed Effluent Limitations Guidelines and Standards for the Centralized Waste Treatment Industry'' hereafter referred to as the Statistical Support Document (EPA–821–R–95–005).

Legal Authority

These regulations are being proposed under the authority of Sections 301, 304, 306, 307, 308, and 501 of the Clean Water Act, 33 U.S.C. Sections 1311, 1314, 1316, 1317, 1318, and 1361.

I. Summary and Scope of the Proposed Regulation

A. Background

Congress adopted the Clean Water Act (CWA) to ''restore and maintain the chemical, physical, and biological integrity of the Nation's waters.'' Section 101(a), 33 U.S.C. § 1251(a). To achieve this goal, the CWA prohibits the discharge of pollutants into navigable waters except in compliance with the statute. The Clean Water Act attacks the problem of water pollution on a number of different fronts. Its primary reliance, however, is on establishing restrictions on the types and amounts of pollutants discharged from various industrial, commercial, and public sources of wastewater.

Congress recognized that regulating only those sources that discharge effluent directly into the nation's waters would not be sufficient to achieve the CWA's goals. Consequently, the CWA requires EPA to promulgate nationally applicable pretreatment standards which restrict pollutant discharges for those who discharge wastewater indirectly through sewers flowing to publicly-owned treatment works (POTWs) (Section 307 (b) and (c), 33 U.S.C. § 1317 (b) & (c)). National pretreatment standards are established for those pollutants in wastewater from indirect dischargers which may pass through or interfere with POTW operations. Generally, pretreatment standards are designed to ensure that wastewater from direct and indirect industrial dischargers are subject to similar levels of treatment. In addition, POTWs are required to implement local treatment limits applicable to their industrial indirect dischargers to satisfy any local requirements (40 CFR 403.5).

Direct dischargers must comply with effluent limitations in National Pollutant Discharge Elimination System (''NPDES'') permits; indirect dischargers must comply with pretreatment standards. These limitations and standards are established by regulation for categories of industrial dischargers and are based on the degree of control that can be achieved using various levels of pollution control technology. In addition, pretreatment standards must be established for those pollutants which are not susceptible to treatment by POTWs or which would interfere with POTW operations (CWA Sections 301(b), 304(b), 306, 307 (b)–(d), 33 U.S.C. §§ 1311(b), 1314(b), 1316, and 1317 (b)–(d)).

Today's proposal represents the Agency's first attempt to develop national guidelines that establish effluent limitations and pretreatment standards for new and existing dischargers from the Centralized Waste Treatment Industry. EPA estimates that the regulation being proposed today would reduce the discharge of conventional, priority, and non-conventional pollutants by at least 123 million pounds per year. EPA performed an analysis of the water quality benefits that would be derived from this proposal and predicts that contributions by centralized waste treatment facilities to current excursions of aquatic life and/or human health toxic effect levels would be eliminated for twenty streams and reduced for ten others. EPA also projects through modeling that eleven of the seventeen POTWs expected to experience inhibition of treatment due to

centralized treatment facilities would no longer experience inhibition from these sources.

B. The Centralized Waste Treatment Industry

The adoption of the increased pollution control measures required by CWA and RCRA requirements had a number of ancillary effects, one of which has been the formation and development of a waste treatment industry. Several factors have contributed to the growth of this industry. Thus, for example, in order to comply with CWA discharge limits, categorical industries have installed new (or upgraded existing) wastewater treatment facilities in order to treat their process wastewater. But the wastewater treatment may produce a residual sludge which itself may require further treatment before disposal under EPA RCRA requirements. Furthermore, many industrial process by-products now are either RCRA listed or characteristic hazardous wastes which require special handling or treatment before disposal.

A manufacturing facility's options for managing these wastes include on-site treatment with its other wastes or sending them off-site. Because a large number of operations have chosen to send their wastes off-site, specialized facilities have developed whose sole commercial operations are the handling of wastewater treatment residuals and industrial process by-products. Moreover, some industrial operations also have chosen to accept wastes from off-site for treatment in their on-site facilities. Further, there are some commercial facilities to which wastes are piped for treatment. Other wastes go to landfills or incinerators for disposal.

The waste treatment industry includes facilities which receive both hazardous and non-hazardous industrial waste. These facilities receive a variety of wastes for treatment and recovery of waste components. Among these wastes are wastewater treatment sludges, process residuals, tank bottoms, off-spec products, and wastes generated from clean-up activities. Some facilities may also treat industrial process wastewater with these wastes.

In the early 1990's, this industry experienced a slow down because many existing facilities were designed to handle larger quantities than the market produced. Reduced economic activity generally in combination with pollution prevention measures resulted in a decrease in the amount of waste sent off-site for treatment. As a result, competition among facilities increased resulting in facilities operating below capacity and experiencing economic and financial difficulties. This may be changing at the present. Recently, participants in the March 1994 public meeting for this proposal stated that the industry is experiencing new growth due to increasing environmental regulations. The Agency solicits information and data on the current size of the industry and trends related to the growth or decline in need for the services provided by these facilities.

C. Scope

Today's proposal would establish discharge limitations and standards for discharges from those facilities which the rule defines as ''centralized waste treatment facilities.'' The facilities which are covered by this guideline include stand-alone waste treatment and recovery facilities which treat waste received from off-site. ''Centralized waste treatment facilities'' also include treatment systems which treat on-site generated process wastewater with wastes received from off-site. However, the rule does not apply to facilities which receive wastes from off-site by pipeline from the original source of waste generation.

Centralized waste treatment facilities include the following: (1) Commercial facilities that accept waste from off-site for treatment from facilities not under the same ownership as the treating facility; (2) non-commercial facilities that accept waste from off-site for treatment only from facilities under the same ownership (intra-company transfer); or (3) mixed commercial/non-commercial facilities that accept some waste from off-site for treatment from facilities not under the same ownership and some waste from facilities under the same ownership.

This summary section highlights the technology bases and other key aspects of the proposed rule. The technology descriptions in this section are presented in abbreviated form; more detailed descriptions are included in the Technical Development Document and Section V.E. Today's proposal presents the Agency's recommended regulatory approach as well as other options considered by EPA. The Agency's recommended approach for establishing discharge limitations is based on a detailed evaluation of the available data. As indicated below in the discussion of the specifics of the proposal, the Agency welcomes comment on all options and issues and encourages commenters to submit additional data during the comment period. Also, the Agency plans additional discussions with interested parties during the comment period to ensure that the Agency has the views of all parties and the best possible data upon which to base a decision for the final regulation. EPA's final regulation may be based upon any technologies, rationale or approaches that are a logical outgrowth of this proposal and public comments, including any options considered but not selected for today's proposed regulation.

In today's notice, EPA is proposing for the Centralized Waste Treatment Point Source Category effluent limitations guidelines and standards based on BPT, BCT, BAT, NSPS, PSES, and PSNS for new and existing facilities that are engaged in the treatment of industrial waste from off-site facilities.

The proposed regulation today applies to the following activities:

- Subcategory A: Discharges from operations which treat, or treat and recover metals from, metal-bearing waste received from off-site,
- Subcategory B: Discharges from operations which treat, or treat and recover oil from, oily waste received from off-site, and
- Subcategory C: Discharges from operations which treat, or treat and recover organics from, other organic-bearing waste received from off-site.

Facilities subject to the guidelines and standards would include facilities whose exclusive operation is the treatment of off-site generated industrial waste as well as industrial or manufacturing facilities that also accept waste from off-site for centralized treatment. A further discussion of the types of waste included in each subcategory is included in the Technical Development Document and Section III.B. of this notice.

The proposed effluent limitations guidelines and standards are intended to cover wastewater discharges resulting from treatment of, or recovery of components from, hazardous and non-hazardous industrial waste received from off-site facilities by tanker truck, trailer/roll-off bins, drums, barges, or other forms of shipment. Any discharges generated from the treatment of wastes received through an open or enclosed conduit (e.g., pipeline, channels, ditches, and trenches, etc.) from the original source of waste generation are not included in the regulation. However, discharges generated from the treatment of CWT wastes received by pipeline from a facility acting as an intermediate collection point for CWT wastes received from off-site *would* be subject to the proposed requirements. Based on information collected in the 1991 Waste Treatment Industry Questionnaire and discussions with operators of waste treatment facilities, EPA has concluded that facilities which

receive all their wastes through a pipeline or trench from the original source of waste generation are receiving continuous flows of process wastewater with relatively consistent pollutant profiles. In the case of these treatment facilities, the process wastewater flows in virtually all cases would be subject to categorical regulations if discharged from the original point of waste generation. However, these companies, instead of discharging to a surface water or POTW, discharge process wastewater to a ''centralized pipeline'' facility. EPA has concluded that the effluent limitations and pretreatment standards for centralized waste treatment facilities should *not* apply to such pipeline treatment facilities because their wastes differ fundamentally from those received at centralized waste treatment facilities. In large part, the waste streams received at centralized waste treatment facilities are more concentrated and variable, including sludges, tank bottoms, off-spec products, and process residuals. The limitations and standards developed for centralized waste treatment facilities, in turn, reflect the types of waste streams being treated and are necessarily different from those promulgated for discharges resulting from the treatment of process wastewater for categorical industries. However, this proposed pipeline exclusion would not apply to facilities which receive waste via conduit (i.e., pipeline, trenches, ditches, etc.) from facilities that are acting merely as waste collection centers that are not the original source of the waste generation.

In evaluating the current operation and performance of centralized waste treatment facilities, the Agency is concerned about the effective management of such highly-concentrated waste streams. Due to the variability of waste streams, the possibility exists for dilution to occur rather than effective treatment. Therefore, the Agency is proposing to require monitoring to demonstrate compliance with the limitations and standards for the regulated treatment subcategories The limitations and standards proposed today are based on treatment systems that optimize removals for homogeneous wastes. If a facility commingles different subcategories of CWT wastes before treatment or mixes CWT wastes with non-CWT waste streams before treatment, the facility must demonstrate that its treatment system achieves pollutant limits equivalent to the effluent limitations and standards that would be achieved if the CWT wastes were treated separately. (In addition, there may be circumstances where the mixing of off-site and on-site waste streams is necessary to prevent upset of treatment systems, such as with biological treatment for organic waste streams.) Equivalent treatment is demonstrated when Centralized Waste Treatment Industry pollutants of concern are (1) detectable at quantifiable levels prior to mixing, (2) are detected at quantifiable levels following mixing, and (3) the on-site treatment system is designed to treat the pollutants of concern in some manner other than incidental removals by partitioning to sludge or air. The Agency believes such an approach is necessary to ensure achievement of the pollutant discharge levels which the Agency has preliminarily determined may be obtained through proper treatment of the CWT wastes. In the absence of such a requirement to demonstrate achievable removals, facilities may merely dilute wastes with other waste streams to meet the required discharge levels.

The Agency also solicits comment on including a *de minimis* quantity or percentage of off-site receipts in comparison to the total facility flow for which facilities would not be considered in the scope of this regulation. According to comments received on the May 1994 proposed Effluent Guideline Plan (59 FR 25859), some manufacturing facilities may receive a few shipments of waste or off-spec products to be treated on-site with wastewater from on-site manufacturing processes, but these facilities do not actively accept large quantities of waste from off-site for the purpose of treatment and disposal. In the 1991 Waste Treatment Industry Questionnaire, no facilities were identified with intermittent shipments of waste, but the questionnaire mailing list was developed on the basis of a facility's regular business. Therefore, manufacturing facilities which do not accept off-site waste on a normal basis were not included in the mailing list. The EPA is requesting information on the amounts of waste received and the reasons the waste were accepted to determine if a *de minimis* quantity should be established to limit the applicability of this rulemaking. At present, no *de minimis* quantity has been established for this rulemaking. Facilities are included in the scope of this regulation regardless of the quantity received for treatment.

D. Proposed Limitations and Standards

1. Best Practicable Control Technology Currently Available (BPT)

The Agency is proposing to set BPT effluent limitations guidelines for all subcategories of the Centralized Waste Treatment Industry to control conventional, priority, and non-conventional pollutants in the waste treatment effluent. In the case of metal-bearing wastes that include cyanide streams, achievement of BPT limitations requires pretreatment for cyanide. Table I.D–1 is a summary of the technology basis for the proposed effluent limitations for each subcategory. L2,i1,xs36,r50,r150

Table I.D–1.—Technology Basis for BPT Effluent Limitations
subpart
basis

The pollutants controlled and the points of application vary for each subcategory and are described in Sections V.

2. Best Conventional Pollutant Control Technology (BCT)

The EPA is proposing BCT effluent limitations guidelines for Total Suspended Solids (TSS) and Oil and Grease for the Metals and Oils Subcategories of the Centralized Waste Treatment Industry. The EPA is also proposing to set BCT effluent limitations guidelines for biochemical oxygen demand (BOD_5) and total suspended solids (TSS) for the Organics Subcategory. The proposed BCT effluent limitations guidelines are equal to the proposed BPT limitations for conventional pollutants. The development of proposed BCT effluent limitations is further explained in Section V.

3. Best Available Technology Economically Achievable (BAT)

The Agency is proposing to set BAT effluent limitations guidelines for all subcategories of the Centralized Waste Treatment Industry. These proposed limitations are based on the technologies proposed for BPT. The pollutants controlled and the points of application vary for each subcategory and are described in Section V.

4. New Source Performance Standards (NSPS)

EPA is proposing to set NSPS equivalent to the proposed BPT/BCT/BAT effluent limitations for all subcategories of the Centralized Waste Treatment Industry. NSPS are discussed in more detail in Section V.

5. Pretreatment Standards for Existing Sources (PSES)

For pollutants that pass-through or otherwise interfere with POTWs, EPA is proposing to set PSES equivalent to the proposed BAT effluent limitations for all subcategories of the Centralized Waste Treatment Industry. PSES are further discussed in Section V.

6. Pretreatment Standards for New Sources (PSNS)

For pollutants that pass-through or otherwise interfere with POTWs, EPA is proposing to set PSNS equivalent to the proposed NSPS effluent limitations for all subcategories of the Centralized Waste Treatment Industry. PSNS are further discussed in Section V.

II. Background

A. Clean Water Act

1. Statutory Requirements of Regulation

As previously discussed, Section 301(a) of the CWA prohibits discharges of pollutants to navigable waters except in compliance with the statute. 33 U.S.C. 1311(a). Section 301(b) requires that direct dischargers comply with effluent limitations established by EPA for categories of industrial dischargers or in the case of certain categories of new dischargers, new source performance standards.

Section 307 requires indirect dischargers to comply with pretreatment standards and Section 306 requires compliance with new source performance standards.

These guidelines and standards are summarized below:

a. *Best practicable control technology currently available (BPT)—Sec. 304(b)(1) of the CWA.* In the guidelines, EPA defines BPT effluent limits for conventional, priority,[1] and non-conventional pollutants. In specifying BPT, EPA looks at a number of factors. EPA first considers the cost of achieving effluent reductions in relation to the effluent reduction benefits. The Agency next considers: the age of the equipment and facilities, the processes employed and any required process changes, engineering aspects of the control technologies, non-water quality environmental impacts (including energy requirements), and such other factors as the Agency deems appropriate. CWA § 304(b)(1)(B). Traditionally, EPA establishes BPT effluent limitations based on the average of the best performances of facilities within the industry of various ages, sizes, processes or other common characteristic. Where, however, existing performance is uniformly inadequate, EPA may require higher levels of control than currently in place in an industrial category if the Agency determines that the technology can be practically applied.

b. *Best conventional pollutant control technology (BCT)—Sec. 304(b)(4) of the CWA.* The 1977 amendments to the CWA required EPA to identify effluent reduction levels for conventional pollutants associated with BCT technology for discharges from existing industrial point sources. In addition to other factors specified in Section 304(b)(4)(B), the CWA requires that EPA establish BCT limitations after consideration of a two part ''cost-reasonableness'' test. EPA explained its methodology for the development of BCT limitations in July 1986 (51 FR 24974).

Section 304(a)(4) designates the following as conventional pollutants: biochemical oxygen demand (BOD_5), total suspended solids (TSS), fecal coliform, pH, and any additional pollutants defined by the Administrator as conventional. The Administrator designated oil and grease as an additional conventional pollutant on July 30, 1979 (44 FR 44501).

c. *Best available technology economically achievable (BAT)—Sec. 304(b)(2) of the CWA.* In general, BAT effluent limitations guidelines represent the best economically achievable performance of plants in the industrial subcategory or category. The factors considered in assessing BAT include the cost of achieving BAT effluent reductions, the age of equipment and facilities involved, the process employed, potential process changes, and non-water quality environmental impacts, including energy requirements. The Agency retains considerable discretion in assigning the weight to be accorded these factors. Unlike BPT limitations, BAT limitations may be based on effluent reductions attainable through changes in a facility's processes and operations. As with BPT, where existing performance is uniformly inadequate, BAT may require a higher level of performance than is currently being achieved based on technology transferred from a different subcategory or category. BAT may be based upon process changes or internal controls, even when these technologies are not common industry practice.

d. *New source performance standards (NSPS)—Sec. 306 of the CWA.* NSPS reflect effluent reductions that are achievable based on the best available demonstrated treatment technology. New facilities have the opportunity to install the best and most efficient production processes and wastewater treatment technologies. As a result, NSPS should represent the most stringent controls attainable through the application of the best available control technology for all pollutants (i.e., conventional, nonconventional, and priority pollutants). In establishing NSPS, EPA is directed to take into consideration the cost of achieving the effluent reduction and any non-water quality environmental impacts and energy requirements.

e. *Pretreatment standards for existing sources (PSES)—Sec. 307(b) of the CWA.* PSES are designed to prevent the discharge of pollutants that pass-through, interfere-with, or are otherwise incompatible with the operation of publicly-owned treatment works (POTW). The CWA authorizes EPA to establish pretreatment standards for pollutants that pass-through POTWs or interfere with treatment processes or sludge disposal methods at POTWs. Pretreatment standards are technology-based and analogous to BAT effluent limitations guidelines.

The General Pretreatment Regulations, which set forth the framework for the implementation of categorical pretreatment standards, are found at 40 CFR Part 403. Those regulations contain a definition of pass-through that addresses localized rather than national instances of pass-through and establish pretreatment standards that apply to all non-domestic dischargers. See 52 FR 1586, January 14, 1987.

f. *Pretreatment standards for new sources (PSNS)—Sec. 307(b) of the CWA.* Like PSES, PSNS are designed to prevent the discharges of pollutants that pass-through, interfere-with, or are otherwise incompatible with the operation of POTWs. PSNS are to be issued at the same time as NSPS. New indirect dischargers have the opportunity to incorporate into their plants the best available demonstrated technologies. The Agency considers the same factors in promulgating PSNS as it considers in promulgating NSPS.

2. Section 304(m) Consent Decree

Section 304(m) of the Act, added by the Water Quality Act of 1987, requires EPA, before February 4, 1988, to

[1] In the initial stages of EPA CWA regulation, EPA efforts emphasized the achievement of BPT limitations for control of the ''classical'' pollutants (e.g., TSS, pH, BOB_5). However, nothing on the face of the statute explicitly restricted BPT limitation to such pollutants. Following passage of the Clean Water Act of 1977 with its requirement for points sources to achieve best available technology limitations to control discharges of toxic pollutants, EPA shifted its focus to address the listed priority pollutants under the guidelines program. BPT guidelines continue to include limitations to address all pollutants.

establish a schedule (1) for reviewing and revising existing guidelines and standards and (2) for promulgating effluent guidelines for categories of sources of priority or nonconventional pollutants for which effluent limitations and pretreatment standards had not previously been published. The statutory deadline for such guidelines is no later four years after February 4, 1987, for categories identified in the first published plan.

The Natural Resource Defense Council (NRDC) and Public Citizen, Inc. filed suit against the Agency, alleging violation of Section 304(m) and other statutory authorities requiring promulgation of effluent limitations guidelines, new source performance standards, new source performance standards and pretreatment standards. (*NRDC, et al.* v. *Reilly*, Civ. No. 89–2980 (D.D.C.). Under the terms of a consent decree dated January 31, 1992, which settled the litigation, EPA agreed, among other things, to propose and promulgate 20 new guidelines establishing BPT, BCT and BAT limitations and pretreatment standards, including guidelines and standards for CWT facilities.

B. Summary of Public Participation

During the data gathering activities that preceded development of the proposed rules, EPA met with representatives from the industry, the Hazardous Waste Treatment Council, the National Solid Waste Management Association, and the Natural Resources Defense Council. Because most of the facilities affected by this proposal are indirect dischargers, the Agency has made a concerted effort to consult with State and local entities that will be responsible for implementing this regulation. EPA has met with pretreatment coordinators from around the nation and presented our regulatory approach before the Association of Metropolitan Sewerage Authorities to solicit feedback on implementation issues. Today's proposal solicits comment on many of the issues raised by EPA's co-regulators.

On March 8, 1994, EPA sponsored a public meeting, where the Agency shared information about the content and the status of the proposed regulation. The meeting was announced in the Federal Register, agendas and meeting materials were distributed at the meeting. The public meeting also gave interested parties an opportunity to provide information, data, and ideas on key issues. EPA's intent in conducting the public meeting was to elicit input that would improve the quality of the proposed regulations.

At the public meeting, the Agency clarified that the public meeting would not replace the notice-and-comment process, nor would the meeting become a mechanism for a negotiated rulemaking. While EPA promised to accept information and data at the meeting and make good faith efforts to review all information and address all issues discussed at the meeting, EPA could not commit to fully assessing and incorporating all comments into the proposal. EPA will assess all comments and data received at the public meeting prior to promulgation.

C. The Land Disposal Restrictions Program

1. Introduction to RCRA Land Disposal Restrictions

The Hazardous and Solid Waste Amendments (HSWA) to the Resource Conservation and Recovery Act (RCRA), enacted on November 8, 1984, largely prohibit the land disposal of untreated hazardous wastes. Once a hazardous waste is prohibited from land disposal, the statute provides only two options for legal land disposal: meet the treatment standard for the waste prior to land disposal, or dispose of the waste in a land disposal unit that has been found to satisfy the statutory no migration test. A no migration unit is one from which there will be no migration of hazardous constituents for as long as the waste remains hazardous. RCRA Sections 3004 (d), (e), (g)(5). The treatment standards may be expressed as either constituent concentration levels or as specific methods of treatment. These standards must substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized. RCRA Section 3004(m)(1). For purposes of the restrictions, the RCRA program defines land disposal to include any placement of hazardous waste in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave.

2. BDAT and Land Disposal Restrictions Standards

EPA generated a set of hazardous waste treatability data to serve as the basis for land disposal restrictions standards. First, EPA identified Best Demonstrated Available Treatment Technology (BDAT) for each listed hazardous waste. BDAT was that treatment technology which EPA found to be the most effective for that waste and which was also readily available to generators and treaters. In some cases EPA designated as BDAT for a particular waste stream a treatment technology shown to have successfully treated a similar but more difficult to treat waste stream. This ensured that the land disposal restrictions standards for a listed waste stream were achievable since they always reflected the actual treatability of the waste itself or of a more refractory waste.

3. RCRA Phase 2 and the Centralized Waste Treatment Industry Effluent Guidelines

The RCRA Phase 2 final rule July 27, 1994, promulgated Universal Treatment Standards (UTS) for all constituents regulated by the RCRA Land Disposal Restrictions program. The UTS are a series of concentration levels for wastewater and nonwastewaters that provide a single treatment standard for each constituent regardless of the process generating it. Previously, many constituents were regulated with several numerical treatment standards depending on the identity of the original waste. Comments from generators and treaters supported the UTS as a means of simplifying compliance with LDR requirements by ensuring that only one treatment standard applies to any constituent in any waste residue.

While the UTS may not apply to those facilities addressed by the CWT effluent guidelines (due to the lack of land disposal), both involve many of the same wastewater and both are technology-based. Consequently, EPA is identifying the major differences between the development of the two rules.

4. General Differences in Approaches Between LDR UTS and Centralized Waste Treatment Industry Effluent Guidelines

Comparing the effluent guidelines proposed by today's rule for the Centralized Waste Treatment Industry with the UTS finalized in July 1994 shows that the RCRA and CWA approaches are similar in that both rules address many of the same waste streams and base treatment standards on many of the same wastewater treatment technologies. However, the two sets of treatment standards differ both in their format and in the numerical values set for each constituent.

The differences in format between effluent guidelines and LDR's are relatively straightforward. The effluent guidelines provide for several types of discharge (new vs. existing sources, pretreatment vs. direct discharge) while the LDR program makes no distinctions

among different types of land disposal. While the effluent guidelines address both monthly and daily limits, UTS only sets daily limits.

For many pollutants, there are differences in the numerical values of the limits. The differences result from the use of different legal criteria for developing the limits and resulting differences in the technical and economic criteria and data sets for establishing the respective limits. As described above, the LDR UTS establish a single numerical standard for each regulated pollutant parameter that applies to all waste streams.

The Clean Water Act pollutant specific numerical effluent limitations guidelines and standards (40 CFR Subchapter N) often differ not only from the LDR UTS but also from point-source category to point-source category (e.g., Electroplating, 40 CFR part 413; and Metal Finishing, 40 CFR part 433). The effluent guidelines limitations and standards are industry-specific, subcategory-specific, and technology-based. The numerical limits are typically based on different data sets that reflect the performance of specific waste water management and treatment practices. Differences in the limits reflect differences in the statutory factors that the Administrator is required to consider in developing technically and economically achievable limitations and standards—manufacturing products and processes (which for CWT facilities includes types of treatment or waste management services performed), raw materials, wastewater characteristics, treatability, facility size, geographic location, age of facility and equipment, non-water quality environmental impacts, and energy requirements.

Limits for CWT's are developed for individual industrial subcategories leaving the permit writer with the responsibility of assembling the ''building blocks'' into a discharge limit. There is, however, only one set of LDR standards, the Universal Treatment Standards (UTS) applying to all constituents regardless of the waste stream. While there is one set of standards for LDR rules, the limits are generally based on BDAT applied to the waste that is most difficult to treat.

A consequence of these differing approaches is that similar or identical waste streams are regulated at different levels. Several of the effluent guidelines discharge categories reflect pretreatment prior to discharge to POTW's where there is further treatment and are therefore not directly comparable to LDR wastewater standards. However, those categories that represent daily maximum standards for discharge of treated wastes are analogous to the LDR wastewater standards, and the numerical differences in these standards reflect differences in methodology as described above.

EPA's survey of CWT facilities identified no wastewater discharges which would be regulated under the CWT effluent limitations guidelines and standards and the Universal Treatment Standards. Because none of the 72 CWT discharging CWT facilities discharge wastewater effluent to land disposal units, the proposed regulations for the CWT Industry are not redundant requirements.

III. Description of the Industry

A. Centralized Waste Treatment Facilities

Presented below is a brief summary description of the Centralized Waste Treatment Industry for which EPA is today proposing guidelines.

Based upon responses to EPA's 1991 Waste Treatment Industry Questionnaire (see discussion below), the Agency estimates that there are approximately 85 centralized waste treatment facilities in 31 States of the type for which EPA is proposing limitations and standards. These include both stand-alone treatment facilities as well as facilities which treat their own process wastewater and treatment or process residuals as well as wastes received from off-site. The major concentration of centralized waste treatment facilities in the U.S. are found in the Midwest, Northeast, and Northwest regions, due to the proximity of the industries generating the wastes undergoing treatment.

As previously noted, centralized waste treatment facilities accept a variety of different wastes for treatment. Before these facilities accept a waste for treatment, the waste generally undergoes a rigorous screening for compatibility with other wastes being treated at the facility. Waste generators initially furnish the treatment facility with a sample of the waste stream to be treated. The sample is analyzed to characterize the level of pollutants in the sample and bench-scale treatability tests are performed to determine what treatment is necessary to treat the waste stream effectively. After all analysis and tests are performed, the treatment facility determines the cost for treating the waste stream. If the waste generator accepts the cost of treatment, shipments of the waste stream to the treatment facility will begin. For each truck load of waste received for treatment, the treatment facility collects a sample from the shipment and analyzes the sample to determine if it is similar to the initial sample tested. If the sample is similar, the shipment of waste will be treated. If the sample is not similar but falls within an allowable range as determined by the treatment facility, the treatment facility will reevaluate the estimated cost of treatment for the shipment. Then, the waste generator decides if the waste will remain at the treatment facility for treatment. If the sample is not similar and does not fall within an allowable range, the treatment facility will decline the shipment for treatment.

Treatment facilities and waste generators complete extensive amounts of paperwork during the waste acceptance process. Most of the paperwork is required by Federal, State, and local regulations. The amount of paperwork necessary for accepting a waste stream emphasizes the difficulty of operating Centralized Waste Treatment facilities.

In its information and data-gathering effort, EPA also looked at how these facilities handle wastes after they are accepted for treatment. Even though a waste must surmount a number of hurdles before being accepted for treatment at a facility, many facilities do not devote the same level of attention to the process of managing and treating wastes for optimal removals. Thus, EPA's data show that approximately half of the facilities in the industry 1) accept wastes for treatment in more than one of the waste categories (metal-bearing, oily or organic-bearing) being considered here or 2) operate other industrial processes that generate wastes at the same site. In most cases, the waste streams from these various sources are mixed prior to treatment or after minimal pretreatment.

The problems associated with the mixing of the different types of wastes and wastewater treated at centralized waste treatment facilities or mixing with other industrial wastewater and non-contaminated stormwater exacerbated the difficulty of evaluating adequate treatment performance. EPA concluded that mixing waste streams adversely affects pollutant removal in the discharge water. Rather than treating to remove pollutants, the facilities were diluting their streams to achieve required effluent levels. Therefore, EPA has concluded reasonable further progress to the goal of reducing discharges requires achievement of discharge levels associated with treatment of segregated wastestreams. Consequently, as explained above, the Agency is proposing to establish effluent limitations which reflect

achievable effluent reductions for unmixed wastes.

B. Waste Treatment Processes

As the Agency learned from data and information collected as a result of the 1991 Waste Treatment Industry Questionnaire, CWTs accept many types of hazardous and non-hazardous industrial waste for treatment in liquid or solid form. In 1989, approximately 1.1 billion gallons of industrial waste were accepted for treatment of which 53 percent were hazardous and 47 percent were non-hazardous.

1. Metal-Bearing Waste Treatment or Recovery

In 1989, 709 million gallons of metal-bearing wastes were accepted for treatment by 56 facilities. This metal-bearing waste comprised the largest portion of the waste treated by the Centralized Waste Treatment Industry. The typical treatment process used for metal-bearing wastes was precipitation with lime or caustic followed by filtration. The sludge generated was then landfilled in a RCRA Subtitle C or D landfill depending upon its content. A small fraction of facilities recovered metals from the waste using selective metals precipitation or electrolytic metals recovery processes. Most facilities that recovered metals did not generate a sludge that required disposal, instead, the sludges were sold for the metal content.

2. Oily Waste Treatment or Recovery

Approximately 223 million gallons of oily waste were accepted for treatment by 35 facilities in 1989. A wide range of oily wastes were accepted for treatment and the on-site treatment scheme was determined by the type of oily waste accepted. The oily waste accepted for treatment could typically be classified as either: (1) stable oil-water emulsions, such as coolants and lubricants; or (2) unstable oil-water emulsions, such as bilge water. Stable oil-water emulsions are more difficult to treat because the droplets of the dispersed phase are so small that separation of the oil and water phases by settling would occur very slowly or not at all and required a chemical process to break the emulsion to adequately treat the waste. From the data collected in the 1991 Waste Treatment Industry Questionnaire, chemical emulsion breaking processes were the most widely-used treatment technology at the 29 oil recovery facilities, and, therefore, EPA believes that these facilities primarily accept for treatment stable oil-water emulsions. The wastewater effluent resulting from the emulsion-breaking process was typically mixed with wastewater from other CWT subcategories or stormwater for further treatment prior to discharge. Six facilities did not operate oil recovery processes and used only dissolved air flotation (DAF), a technique used to separate oil and suspended solids from water by skimming, to treat the oily waste receipts. Consequently, EPA concluded that these facilities were receiving for treatment less stable oil-water emulsions that were amenable to gravity separation or dissolved air flotation, and did not require chemical emulsion breaking treatment processes. EPA's sampling program focused on facilities that treated the more concentrated and more difficult to treat stable oil-water emulsions as reported by waste manifest forms and facility records. In August 1994, EPA conducted additional sampling at an oily waste treatment facility to further characterize the types of oils accepted for treatment and the technologies used. The data has not been reviewed at the time of this proposal, but the data is included in the rulemaking record and will be evaluated prior to promulgation. EPA solicits comments with detailed information and data on the concentrations of pollutants and type of oily wastes accepted for treatment by these facilities so that EPA can develop a more thorough understanding of the facility operations. Any new information used to establish the basis for the final regulation will be made available for public comment.

3. Organic Waste Treatment or Recovery

In 1989, 22 facilities accepted 147 million gallons of organic wastewater for treatment. Most facilities with treatment on-site used some form of biological treatment to handle the wastewater. Most of the facilities in the Organics Subcategory have other industrial operations as well, and the CWT wastes are mixed with these wastewater prior to treatment. The relatively constant on-site wastewater can support the operation of conventional, continuous biological treatment processes, which otherwise could be upset by the variability of the off-site waste receipts.

IV. Summary of EPA Activities and Data Gathering Efforts

A. EPA's Initial Efforts to Develop a Guideline for the Waste Treatment Industry

In 1986, the Agency initiated a study of waste treatment facilities which receive waste from off-site for treatment, recovery, or disposal. The Agency looked at various segments of the waste management industry including centralized waste treatment facilities, landfills, incinerators, fuel blending operations, and waste solidification/stabilization processes (Preliminary Data Summary for the Hazardous Waste Treatment Industry, EPA 1989). EPA conducted a separate study of the Solvent Recycling Industry (Preliminary Data Summary for the Solvent Recycling Industry, EPA 1989).

Development of effluent limitations guidelines and standards for this industry began in 1989. EPA originally studied centralized waste treatment facilities, fuel blending operations and waste solidification/stabilization facilities. EPA has decided not to propose nationally applicable effluent limitations guidelines and standards for fuel blending and stabilization operations because, even though these operations are integral to a facility's waste management practices, wastewater generation and disposal practices are not similar to the operations of centralized waste treatment operations. Most fuel blending and stabilization processes are ''dry,'' i.e., they generate no wastewater. Therefore, EPA decided to limit this phase of the proposed rulemaking to the development of regulations for the Centralized Waste Treatment Industry.

B. Wastewater Sampling Program

In the sampling program for the Hazardous Waste Treatment Industry Study, twelve facilities were sampled to characterize the wastes received and the on-site treatment technology performance at incinerators, landfills, and hazardous waste treatment facilities. Since all of the facilities samples had more than one on-site operation, the data collected can not be used for this project because data were collected for mixed waste streams and the waste characteristics and treatment technology performance for the hazardous waste treatment facilities cannot be differentiated.

Between 1989 and 1993, EPA visited 26 of the 85 centralized waste treatment facilities. During each visit, EPA gathered information on waste receipts, waste and wastewater treatment, and disposal practices. Based on these data and the responses to the 1991 Waste Treatment Industry Questionnaire, EPA selected eight of the 26 facilities for the wastewater sampling program in order to collect data to characterize discharges and the performance of their treatment system. Using data supplied by the facilities, EPA applied four criteria in initially choosing which facilities to sample. The criteria were as follows:

whether the wastewater treatment system (1) was effective in removing pollutants; (2) treated wastes received from a variety of sources, (3) employed either novel treatment technologies or applied traditional treatment technologies in a novel manner, and (4) applied waste management practices that increased the effectiveness of the treatment unit. An additional facility was sampled to characterize the wastes received and treatment processes of a facility that treated only non-hazardous waste. From the data collected at the non-hazardous waste treatment facility, waste stream characteristics were similar to that of a facility that treats hazardous waste. The other 17 facilities visited were not sampled, because they did not meet these criteria.

During each sampling episode, facility influent and effluent streams were sampled. Samples were also taken at intermediate points to assess the performance of individual treatment units. This information is summarized in the Technical Development Document. In the first two sampling episodes, streams were analyzed for over 480 pollutants to identify the range of pollutants possible at these facilities. After the analytical data were reviewed for the first two sampling episodes, the number of pollutants analyzed were reduced to approximately 180 that were detected in the initial sampling efforts.

In 1994, an additional four facilities were visited that are not included in the 85 Centralized Waste Treatment facilities identified in 1989. These facilities were not in business at the time the questionnaire was mailed. These facilities specialized in the treatment of bilge waters and unstable oil-water mixtures. From these site visits, one facility was chosen to be sampled based on the on-site treatment and type of oily waste accepted for treatment. As previously discussed, the data has not been reviewed at the time of this proposal, but the data is included in the regulatory record and will be evaluated prior to promulgation.

1. Metal-Bearing Waste Treatment and Recovery Sampling

From the ten sampling episodes completed from 1989 to 1994, only six sampling episodes contained data which were used to characterize this subcategory's waste streams and treatment technology performance. All of the facilities used some form of precipitation for treatment of the metal-bearing waste streams. Only one facility was a direct discharger and was therefore designed to effectively treat the conventional pollutants important for this subcategory, TSS and Oil and Grease.

2. Oily Waste Treatment and Recovery Sampling

From the sampling data collected between 1989 and 1994, five sampling episodes contained data which are applicable to the treatment of oily wastes. Data for the remaining five sampling episodes could not be used because the facilities did not accept oily waste for treatment or recovery. Identification of facilities to be sampled was difficult because most facilities in the oily waste treatment subcategory had other centralized waste treatment processes on-site. Three of the four facilities had other on-site Centralized Waste Treatment processes. The oily wastewater after emulsion-breaking was commingled with other subcategory waste streams prior to further treatment of the oily waste stream. In all three cases most of the pollutants of concern that were detected prior to commingling were at a non-detect level after commingling. Therefore, dilution resulted from the mixing and no further treatment may have occurred. Data from the three facilities could be used only to characterize the untreated waste streams after emulsion-breaking. Data from one of the facilities could not be evaluated prior to this proposal but is included in the public record. Therefore, data from only one facility could be used to assess treatment performance at the facilities in this subcategory.

3. Organic Waste Treatment and Recovery Sampling

Similar to the case with the Oily Waste Subcategory, identification of facilities for assessing waste streams and treatment technology performance was difficult, because most organic waste treatment facilities had other industrial operations on-site. The centralized waste treatment waste streams were small in comparison to the overall site flow. Two facilities were identified and sampled which treated a significant portion of off-site generated organic waste streams. Data from one of the facilities could not be used when developing technology options for proposal because the treatment system performance was not optimal at the time of sampling, but data from this facility was used to characterize the raw waste streams.

Therefore, sampling data from one facility was used to determine the treatment technology basis for this subcategory.

C. 1991 Waste Treatment Industry Questionnaire (Census of the Industry)

Under the authority of Section 308 of the Clean Water Act, EPA sent a questionnaire in 1991 to 455 facilities that the Agency had identified as possible Centralized Waste Treatment facilities. Since the Centralized Waste Treatment Industry is not represented by a SIC code, identification of facilities was difficult. Directories of treatment facilities, Agency information, and telephone directories were used to identify the 455 facilities to which the questionnaires were mailed. The responses from 416 facilities indicated that 89 facilities treated, or recovered material from, industrial waste from off-site in 1989 and the remaining 327 facilities did not treat, or recover materials from, industrial waste from off-site. Out of the 89 facilities that received industrial waste from off-site for treatment, four facilities received all of the off-site waste via pipeline. For the reasons discussed previously, this proposed regulation does not cover waste transferred from the original source of generation by pipeline. Therefore, based on this data base, 85 facilities are currently in the scope of this regulation. The questionnaire specifically requested information on: (1) the type of wastes accepted for treatment; (2) the industrial waste management practices used; (3) the quantity, treatment, and disposal of wastewater generated during industrial waste management; (4) available analytical monitoring data on wastewater treatment; (5) the degree of co-treatment (treatment of centralized waste treatment wastewater with wastewater from other industrial operations at the facility); and (6) the extent of wastewater recycling and/or reuse at the facility. Information was also obtained through follow-up telephone calls and written requests for clarification of questionnaire responses. Information obtained by the 1991 Waste Treatment Industry Questionnaire is summarized in the Technical Development Document for today's proposed rule.

D. Detailed Monitoring Questionnaire (Follow-Up Questionnaire to a Subset of the Industry)

EPA also requested a subset of centralized waste treatment facilities to submit wastewater monitoring data in the form of individual data points rather than monthly aggregates. These wastewater monitoring data included information on pollutant concentrations and waste receipt data for a six week period. The waste receipt data were

collected to provide information about the types of wastes treated and the influent waste characteristics due to the absence of influent wastewater monitoring data. Data were requested from 19 facilities.

V. Development of Effluent Limitations Guidelines and Standards

A. Industry Subcategorization

1. Development of Current Subcategorization Scheme

For today's proposal, EPA considered whether a single set of effluent limitations and standards should be established for this industry or whether different limitations and standards were appropriate for subcategories within the industry. In its preliminary decision that subcategorization is required and in developing the subcategories set forth in this rulemaking, EPA took into account all the information it collected and developed with respect to the following factors: waste type received; treatment process; nature of wastewater generated; facility size, age, and location; non-water quality impact characteristics; and treatment technologies and costs. In this industry, a wide variety of wastes are treated at a typical facility. Facilities employ different waste treatment technologies tailored to the specific type of waste being treated in a given day.

EPA concluded a number of factors did not provide an appropriate basis for subcategorization. The Agency concluded that the age of a facility should not be a basis for subcategorization because many older facilities have unilaterally improved or modified their treatment process over time. Facility size is also not a useful basis for subcategorization for the Centralized Waste Treatment Industry because wastes can be treated to the same level regardless of the facility size. Likewise, facility location is not a good basis for subcategorization; no consistent differences in wastewater treatment performance or costs exist because of geographical location. Although non-water quality characteristics (solid waste and air emission effects) are of concern to EPA, these characteristics did not constitute a basis for subcategorization. Environmental impacts from solid waste disposal and from the transport of potentially hazardous wastewater are a result of individual facility practices and do not reflect a trend that pertains to different segments of the industry. Treatment costs do not appear to be a basis for subcategorization because costs will vary and are dependent on the following waste stream variables: flow rates, wastewater quality, and pollutant loadings. Therefore, treatment costs were not used as a factor in determining subcategories.

EPA identified only one factor with primary significance for subcategorizing the Centralized Waste Treatment Industry: the type of waste received for treatment or recovery. This factor encompasses many of the other subcategorization factors. The type of treatment processes used, nature of wastewater generated, solids generated, and potential air emissions directly correlate to the type of wastes received for treatment or recovery. Therefore, EPA has concluded that the type of waste received for treatment or recovery is the appropriate basis for subcategorization of this industry. EPA invites comment on whether the specific subcategories proposed today should be further subdivided into smaller subcategories or whether an alternative basis for categorization should be adopted.

2. Proposed Subcategories

Based on the type of wastes accepted for treatment or recovery, EPA has determined that there are three subcategories appropriate for the Centralized Waste Treatment Industry.

- Subcategory A: Facilities which treat, or treat and recover metal from, metal-bearing waste received from off-site,
- Subcategory B: Facilities which treat, or treat and recover oil from, oily waste received from off-site, and
- Subcategory C: Facilities which treat, or treat and recover organics from, other organic waste received from off-site.

a. *Discharges from metal-bearing waste treatment and recovery operations.* Metal-bearing wastes represent the largest volume of wastes treated at the facilities which are the subject of this guidelines development effort. Included within this subcategory are facilities which treat metal-bearing wastes received from off-site as well as facilities which recover metals from off-site metal-bearing waste streams. Currently, EPA has identified 56 facilities as treating metal-bearing wastes. A small percentage of these facilities recover metals from the wastes for sale in commerce or for return to industrial processes. EPA proposes to establish limitations and standards for those conventional, priority, and non-conventional pollutants discharged in this subcategory. Among the metal-bearing wastes typically treated at the facilities in this subcategory are, in some cases, highly-concentrated, complex cyanide waste streams. In the case of CWTs that treat complex cyanides, based on the results of its site visits and data sampling effort, EPA has initially concluded that without first achieving a given level of cyanide reduction prior to metals treatment, the presence of cyanide will interfere with subsequent metals treatment, thus jeopardizing achievement of attainable effluent metals removals.

b. *Discharges from oily waste treatment and recovery operations.* EPA identified 35 facilities that currently discharge wastewater from treatment and recovery operations for oily wastes. EPA proposes to regulate conventional, priority, and non-conventional pollutants in wastewater discharged from this subcategory.

c. *Discharges from organic waste treatment operations.* EPA identified 22 facilities that currently discharge wastewater from the treatment of organic wastes that are received at the facility from off-site for treatment. As explained previously, wastewater discharges from organic recovery process operations, such as solvent recovery, are not included within the scope of this regulation. EPA proposes to regulate the conventional, priority, and non-conventional pollutants wastewater discharges from this subcategory.

B. Characterization of Wastewater

This section describes current water use and wastewater characterization at the 85 centralized waste treatment facilities in the U.S. All waste treatment processes covered by this regulation typically involve the use of water; however, specifics for any facility depend on the facility's waste receipts and treatment processes.

1. Water and Sources of Wastewater

Approximately 2.0 billion gallons of wastewater are generated annually at centralized waste treatment facilities. It is difficult to determine the quantity of wastes attributable to different sources because generally facilities mix the wastewater prior to treatment. EPA has, as a general matter, however, identified the sources described below as contributing to wastewater discharges at centralized waste treatment operations that would be subject to the proposed effluent limitations and standards.

a. *Waste receipts.* Most of the waste received from customers comes in a liquid form and constitutes a large portion of the wastewater treated at a facility. Other wastewater sources include wastewater from contact with the waste at receipt or during subsequent handling.

b. *Solubilization water.* A portion of waste receipts are in a solid form. Water

may be added to the waste to render it treatable.

c. *Waste oil emulsion-breaking wastewater.* The emulsion breaking process separates difficult water-oil emulsions and generates a ''bottom'' or water phase. Approximately 99.2 million gallons of wastewater were generated from emulsion-breaking processes in 1989.

d. *Tanker truck/drum/roll-off box washes.* Water is used to clean the equipment used for transporting wastes. The amount of wastewater generated was difficult to assess because the wash water is normally added to the wastes or used as solubilization water.

e. *Equipment washes.* Water is used to clean waste treatment equipment during unit shut downs or in between batches of waste.

f. *Air pollution control scrubber blow-down.* Water or acidic or basic solution is used in air emission control scrubbers to control fumes from treatment tanks, storage tanks, and other treatment equipment.

g. *Laboratory-derived wastewater.* Water is used in on-site laboratories which characterize incoming waste streams and monitor on-site treatment performance.

h. *Contaminated stormwater.* This is stormwater which comes in direct contact with the waste or waste handling and treatment areas. (Stormwater which does not come into contact with the wastes would not be subject to today's proposed limitations and standards.)

2. Wastewater Discharge

Approximately 3 billion gallons of wastewater were discharged at Centralized Waste Treatment Industry operations in 1989. In general, the primary source of wastewater discharges from these facilities are: waste receipts, solubilization wastewater, tanker truck/drums/roll-off box washes, equipment washes, air pollution control scrubber blow-down, laboratory-derived wastewater, and contaminated stormwater. Centralized waste treatment facilities do not generate a ''process wastewater'' in the traditional sense of this term.[2] As a service industry, there is no manufacturing or commercial ''process'' which is generating water. Because there are no ''manufacturing processes'' or ''products'' for this industry, ''process'' wastewater for this industry will include any wastes received for treatment (''waste receipt'') as well as water which comes into contact with the waste received or waste processing area. The wastewater resulting from contact with the wastes or waste processing area is referred to by the short-hand term ''centralized waste treatment wastewater.''

The 85 facilities identified by the 1991 Waste Treatment Industry Questionnaire can also be characterized by their type of wastewater discharge. Sixteen facilities discharge wastewater directly into a receiving stream or body of water. Another 56 facilities discharge wastewater indirectly, i.e., discharge to a publicly-owned treatment works (POTW).

Thirteen facilities do not dispose of wastewater directly to surface waters or indirectly to POTWs. At these facilities, (1) wastewater is disposed of by alternate means such as on-site or off-site deep well injection or incineration (four facilities); (2) wastewater is sent off-site for treatment (six facilities); (3) the process does not generate wastewater (one facility); and (4) wastewater is evaporated (two facilities). One facility discharges wastewater directly as well as on-site deep well injection.

This regulation applies to direct and indirect discharges only.

3. Wastewater Characterization

The Agency's sampling program for this industry detected over 100 pollutants (conventional, priority, and non-conventional) in waste streams at treatable levels. The quantity of pollutants currently being discharged is difficult to assess due to the lack of monitoring data available from facilities for the list of pollutants identified from the Agency's sampling program prior to commingling of the wastewater with non-contaminated stormwater and other industrial wastewater before discharge. Methodologies were developed to estimate current performance for each subcategory by assessing performance of on-site treatment technologies, wastewater permit information, and monitoring data supplied in the 1991 Waste Treatment Industry Questionnaire and the Detailed Monitoring Questionnaire. For the Metals Subcategory, a ''non-process wastewater'' factor was used to quantify the amount of non-contaminated stormwater and other industrial process water in a facility's discharge. A facility's current discharge of treated Centralized Waste Treatment wastewater was calculated using the monitoring data supplied multiplied by the ''non-process wastewater'' factor. For the Oils Subcategory, present treatment schemes were studied. Most facilities mixed oily wastewater with other CWT or industrial wastewater or stormwater. This generally resulted in inadequate treatment of oily waste because the pollutants detected in oily wastewater were typically not detected in the untreated mixed streams due to dilution. Therefore, current performance was estimated at the point prior to mixing different types of wastewater. For the Organics Subcategory, current performance could not be estimated from the discharge monitoring data submitted by the facilities due to the presence of other industrial wastewater in the discharge. Current performance was estimated by projecting the removal of pollutants resulting from the technologies used on-site. The Agency is soliciting comments on the approaches used to calculate the current performance as well as requesting any monitoring data available before the addition of non-contaminated stormwater or other industrial wastewater.

C. Pollutants Not Regulated

EPA is not proposing effluent limitations or standards for all conventional, priority, and non-conventional pollutants in this proposed regulation. Among the reasons EPA may have decided not to propose effluent limitations for a pollutant are the following:

(a) The pollutant is deemed not present in Centralized Waste Treatment Industry wastewater, because it was not detected in the influent during the Agency's sampling/data gathering efforts with the use of analytical methods promulgated pursuant to Section 304(h) of the Clean Water Act or with other state-of-the-art methods.

(b) The pollutant is present only in trace amounts and is neither causing nor likely to cause toxic effects.

(c) The pollutant was detected in the effluent from only one or a small number of samples and the pollutant's presence could not be confirmed.

(d) The pollutant was effectively controlled by the technologies used as a basis for limitations on other pollutants, including those limitations proposed today, and therefore regulated by the limitations for the indicator pollutants or (e) Insufficient data are available to establish effluent limitations.

D. Available Technologies

The treatment technologies presently employed by the industry represent the range of wastewater treatment systems observed at categorical industrial operations. All 85 centralized waste treatment facilities operate wastewater

[2] Process wastewater is defined in 40 CFR 122.2 as ''any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, by-product, intermediate product, finished product, or waste product.''

treatment systems. The technologies used include physical-chemical treatment, biological treatment, and advanced wastewater treatment. Based on information obtained from the 1991 Waste Treatment Industry Questionnaire and site visits, EPA has concluded that a significant number of these treatment systems need to be upgraded to improve effectiveness and to remove additional pollutants.

Physical-chemical treatment technologies in use are:

- Precipitation/Filtration, which converts soluble metal salts to insoluble metal oxides which are then removed by filtration;
- Dissolved Air Flotation (DAF), which separates solid or liquid particles from a liquid phase by introducing air bubbles into the liquid phase. The bubbles attach to the particles and rise to the top of the mixture;
- Activated Carbon, which removes pollutants from wastewater by adsorbing them onto carbon particles;
- Multi-media/Sand Filtration, which removes solids from wastewater by passing it through a porous medium.

Biological treatment technologies in use are:

- Sequential Batch Reactor, which uses microorganisms to degrade organic material in a batch process;
- Activated Sludge, which uses microorganisms suspended in well-aerated wastewater to degrade organic material;
- PACT® System, a patented process in which powder activated carbon is added to an activated sludge system; and
- Coagulation/Flocculation, which is used to assist clarification of biological treatment effluent.

Advanced wastewater treatment technologies in use are:

- Ultrafiltration, which is used to remove organic pollutants from wastewater according to the organic molecule size; and
- Reverse osmosis, which relies on differences in dissolved solids concentrations to remove inorganic pollutants from wastewater.

The typical treatment sequence for a facility depends upon the type of waste accepted for treatment. Most facilities treating metal-bearing wastes use precipitation/filtration to remove metals. Those that treat oily wastes relied on dissolved air flotation largely to remove oil and grease, but this technology is typically ineffective in removing the metal pollutants that are in many cases also present in these wastewater. Aerobic batch processes and types of conventional activated sludge systems were the most widely-found treatment technology for the organic-bearing wastes.

E. Rationale for Selection of Proposed Regulations

To determine the technology basis and performance level for the proposed regulations, EPA developed a database consisting of daily effluent data collected from the Detailed Monitoring Questionnaire and the EPA Wastewater Sampling Program. This database is used to support the BPT, BCT, BAT, NSPS, PSES, and PSNS effluent limitations and standards proposed today.

1. BPT

a. Introduction. EPA today is proposing BPT effluent limitations for the three discharge subcategories for the Centralized Waste Treatment Industry. The BPT effluent limitations proposed today would control identified conventional, priority, and non-conventional pollutants when discharged from CWT facilities.

b. Rationale for BPT limitations by subcategory. As previously noted, the Centralized Waste Treatment Industry receives for treatment large quantities of concentrated hazardous and non-hazardous industrial waste which results in discharges of a significant quantity of pollutants. The EPA estimates that 176.8 million pounds per year of pollutants are currently being discharged directly or indirectly.

As previously discussed, Section 304(b)(1)(A) requires EPA to identify effluent reductions attainable through the application of ''best practicable control technology currently available for classes and categories of point sources.'' The Senate Report for the 1972 amendments to the CWA explained how EPA must establish BPT effluent reduction levels. Generally, EPA determines BPT effluent levels based upon the average of the best existing performances by plants of various sizes, ages, and unit processes within each industrial category or subcategory. In industrial categories where present practices are uniformly inadequate, however, EPA may determine that BPT requires higher levels of control than any currently in place if the technology to achieve those levels can be practicably applied. *A Legislative History of the Federal Water Pollution Control Act Amendments of 1972*, p. 1468.

In addition, CWA Section 304(b)(1)(B) requires a cost effectiveness assessment for BPT limitations. This inquiry does not limit EPA's broad discretion to adopt BPT limitations that are achievable with available technology *unless* the required additional reductions are ''wholly out of proportion to the costs of achieving such marginal level of reduction.'' *A Legislative History of the Water Pollution Control Act Amendments of 1972*, p. 170. Moreover, the inquiry does not require the Agency to quantify benefits in monetary terms. See e.g. *American Iron and Steel Institute* v. *EPA*, 526 F. 2d 1027 (3rd Cir., 1975).

In balancing costs against the benefits of effluent reduction, EPA considers the volume and nature of expected discharges after application of BPT, the general environmental effects of pollutants, and the cost and economic impacts of the required level of pollution control. In developing guidelines, the Act does not require or permit consideration of water quality problems attributable to particular point sources, or water quality improvements in particular bodies of water. Therefore, EPA has not considered these factors in developing the limitations being proposed today. See *Weyerhaeuser Company* v. *Costle*, 590 F. 2d 1011 (D.C. Cir. 1978).

EPA concluded that the wastewater treatment performance of the facilities it surveyed was, with very limited exceptions, uniformly poor. Under these circumstances, for each subcategory, EPA has preliminarily concluded that only one treatment system meets the statutory test for best practicable, currently available technology. EPA has determined that the performance of facilities which mix different types of highly concentrated CWT wastes with non-CWT waste streams or with stormwater are not providing BPT treatment. The mass of pollutants being discharged is unacceptably high, given the demonstrated removal capacity of treatment systems that the Agency reviewed. Thus, comparison of EPA sampling data and CWT industry-supplied monitoring information establishes that, in the case of metal-bearing waste streams, virtually all the facilities are discharging large total quantities of heavy metals. As measured by total suspended solids (TSS) levels following treatment, TSS concentrations are substantially in excess of levels observed at facilities in other industry categories employing the same treatment technology—10 to 20 times greater than observed for other point source categories.

In the case of oil discharges, most facilities are achieving low removal of oils and grease relative to the performance required for other point source categories. Further, facilities treating organic wastes, while successfully removing organic

pollutants through biological treatment, fail to remove metals associated with these organic wastes.

The poor pollutant removal performance observed generally for discharging CWT facilities is not unexpected. As pointed out previously, these facilities are treating highly concentrated wastes that, in many cases, are process residuals and sludges from other point source categories. EPA's review of permit limitations for the direct dischargers show that, in most cases, the dischargers are subject to ''best professional judgment'' concentration limitations which were developed from guidelines for facilities treating and discharging much more dilute waste streams. EPA has concluded that treatment performance in the industry is widely inadequate and that the mass of pollutants being discharged is unacceptably high, given the demonstrated removal capability of treatment operations that the Agency reviewed.

(i) Subcategory A—Metals Subcategory. The Agency is today proposing BPT limitations for the Metals Subcategory for 22 pollutants. EPA considered three regulatory options to reduce the discharge of pollutants by centralized waste treatment facilities. For a more detailed discussion of the basis for the limitations and technologies selected see the Technical Development Document.

The three currently available treatment systems for which the EPA assessed performance for the Metals Subcategory BPT are:

- Option 1—Chemical Precipitation, Liquid-Solid Separation, and Sludge Dewatering. Under Option 1, BPT limitations would be based upon chemical precipitation with a lime/caustic solution followed by some form of separation and sludge dewatering to control the discharge of pollutants in wastewater. The data reviewed for this option showed that settling/clarification followed by pressure filtration of sludge yields removals equivalent to pressure filtration. In some cases, BPT limitations would require the current treatment technologies in-place to be improved by use of increased quantities of treatment chemicals and additional monitoring of batch processes. For metals streams which contain concentrated cyanide complexes, BPT limitations under Option 1 are based on alkaline chlorination at specific operating conditions prior to metals treatment. As previously noted, without treatment of the cyanide streams prior to metals treatment, metals removal are significantly reduced.
- Option 2—Selective Metals Precipitation, Pressure Filtration, Secondary Precipitation, and Solid-Liquid Separation. The second option evaluated for BPT for centralized waste treatment facilities would be based on the use of numerous treatment tanks and personnel to handle incoming waste streams, and use of greater quantities of caustic in the treatment chemical mixture. (Caustic sludge is easier to recycle.) Option 2 is based on additional tanks and personnel to segregate incoming waste streams and to monitor the batch treatment processes to maximize the precipitation of specific metals in order to generate a metal-rich filter cake. The metal-rich filter cake could possibly be sold to metal smelters to incorporate into metal products. Like Option 1, for metals streams which contain concentrated cyanide complexes, under Option 2, BPT limitations are also based on alkaline chlorination at specific operating conditions prior to metals treatment.
- Option 3—Selective Metals Precipitation, Pressure Filtration, Secondary Precipitation, Solid-Liquid Separation, and Tertiary Precipitation. The technology basis for Option 3 is the same as Option 2 except an additional precipitation step at the end of treatment is added. For metals streams which contain concentrated cyanide complexes, like Options 1 and 2, for Option 3, alkaline chlorination at specific operating conditions would also be the basis for BPT limitations.

The Agency is proposing to adopt BPT effluent limitations based on Option 3 for the Metals Subcategory. These limitations were developed based on an engineering evaluation of the average of the best demonstrated methods to control the discharges of the regulated pollutants in this Subcategory.

EPA's decision to base BPT limitations on Option 3 treatment reflects primarily an evaluation of three factors: the degree of effluent reduction attainable, the total cost of the proposed treatment technologies in relation to the effluent reductions achieved, and potential non-water quality benefits. In assessing BPT, EPA considered the age, size, process, other engineering factors, and non-water quality impacts pertinent to the facilities treating wastes in this subcategory. No basis could be found for identifying different BPT limitations based on age, size, process or other engineering factors. Neither the age nor the size of the CWT facility will directly significantly affect either the character or treatability of the CWT wastes or the cost of treatment. Further, the treatment process and engineering aspects of the technologies considered have a relatively insignificant effect because in most cases they represent fine tuning or add-ons to treatment technology already in use. These factors consequently did not weigh heavily in the development of these guidelines. For a service industry whose service is wastewater treatment, the most pertinent factors for establishing the limitations are costs of treatment, the level of effluent reductions obtainable, and non-water quality effects.

Generally, for purposes of defining BPT effluent limitations, EPA looks at the performance of the best operated treatment system and calculates limitations from some level of average performance of these ''best'' facilities. For example, in the BPT limitations for the Organic Chemicals, Plastics, and Synthetic Fibers Point Source Category, EPA identified ''best'' facilities on a BOD performance criteria of achieving a 95 percent BOD removal or a BOD effluent level of 40 mg/l. 52 FR 42535 (November 5, 1987). For this industry, as previously explained, EPA concluded that treatment performance is, in virtually all cases, poor. Without separation of metal-bearing streams for selective precipitation, metal removal levels are uniformly inadequate across the industry. Consequently, BPT performance levels are based on data from the one well-operated system using selective metals precipitation that was sampled by EPA.

The demonstrated effluent reductions attainable through the Option 3 control technology represent the BPT performance attainable through the application of demonstrated treatment measures currently in operation in this industry. The Agency is proposing to adopt BPT limitations based on the removal performance of the Option 3 treatment system for the following reasons. First, these removals are demonstrated by a facility in this subcategory and can readily be applied to all facilities in the subcategory. The adoption of this level of control would represent a significant reduction in pollutants discharged into the environment.

Second, the Agency assessed the total cost of water pollution controls likely to be incurred for Option 3 in relation to the effluent reduction benefits and determined these costs were economically reasonable.

Third, adoption of these BPT limits could promote the non-water quality objectives of the CWA. Use of the Option 3 treatment regime—which generates a metal-rich filter cake that may be recovered and smelted—could reduce the quantity of waste which are being disposed of in landfills.

The Agency proposes to reject Option 1 because, as discussed above, EPA concluded that mixing disparate metal-bearing waste streams is not the best practicable treatment technology currently in operation for this subcategory of the industry. Consequently, effluent levels associated with this treatment option would not represent BPT performance levels. Option 2 was rejected, although similar to Option 3, because the greater removals obtained through addition of tertiary precipitation at Option 3 were obtained at a relatively insignificant increase in costs over Option 2.

See Section V.F. for further information regarding Monitoring to Demonstrate Compliance with the Regulation.

(ii). Subcategory B—Oils Subcategory. The Agency is today proposing BPT limitations for the Oils Subcategory for 33 pollutants. EPA identified four regulatory options for consideration in establishing BPT effluent reduction levels for this subcategory of the Centralized Waste Treatment Industry. For a more detailed discussion of the basis for the limitations and standards selected see the Technical Development Document.

The four technology options considered for the Oils Subcategory BPT are:

- Option 1—Emulsion-Breaking. Under Option 1, BPT limitations would be based on present performance of emulsion-breaking processes using acid and heat to separate oil-water emulsions. At present, most facilities have this technology in-place unless less stable oil-water mixtures are accepted for treatment. Stable oil-water emulsions require some emulsion-breaking treatment because gravity or flotation alone is inadequate to break down the oil/water stream.
- Option 2—Ultrafiltration. Under Option 2, BPT limitations would be based on the use of ultrafiltration for treatment of less concentrated, stable oily waste receipts or for the additional treatment of wastewater from the emulsion-breaking process.
- Option 3—Ultrafiltration, Carbon Adsorption, and Reverse Osmosis. The Option 3 BPT effluent limitations are based on the use of carbon adsorption and reverse osmosis in addition to the Option 2 technology. The reverse osmosis unit removes metal compounds found at significant levels for this subcategory. Inclusion of a carbon adsorption unit is necessary in order to protect the reverse osmosis unit by filtering out large particles which may damage the reverse osmosis unit or decrease membrane performance.
- Option 4—Ultrafiltration, Carbon Adsorption, Reverse Osmosis, and Carbon Adsorption. Option 4 is similar to Option 3 except for the additional carbon adsorption unit for final effluent polishing.

The Agency is proposing BPT effluent limitations for the Oily Waste Subcategory based on Option 3 as well as Option 2 treatment systems. EPA has preliminarily concluded that both options represent best practicable control technologies. The technologies are in-use in the industry and the data collected by the Agency show that the limitations are being achieved. In assessing BPT, EPA considered age, size, process, other engineering factors, and non-water quality impacts pertinent to the facilities treating wastes in this subcategory. No basis could be found for identifying different BPT limitations based on age, size, process or other engineering factors for the reasons previously discussed. For a service industry whose service is wastewater treatment, the pertinent factors here for establishing the limitations are costs of treatment, the level of effluent reductions obtainable, and non-water quality effects.

Among the options considered by the Agency, both Options 2 and 3 would provide for significant reductions in regulated pollutants discharged into the environment over current practice in the industry represented by Option 1. EPA is nonetheless, concerned about the cost of Option 3 because it is substantially more expensive than Option 2. However, EPA's economic assessment indicates, that Options 2 and 3 are economically reasonable.

As noted, the Agency is proposing Option 2 because it is a currently available and cost-effective treatment option. However, the BPT pollutant removal performance required for a number of specific pollutants (particularly oil and grease and metals) is less stringent than current BPT effluent limitations guidelines promulgated for other industries. EPA is concerned about the potential for encouraging off-site shipment of oily waste now being treated on-site if the limitations for this subcategory are significantly different from those other BPT effluent limitations currently in effect.

EPA is proposing both options for comment because the Agency is concerned that, while both Options 2 and 3 are proven treatment technologies currently available to this industry, the additional effluent reductions associated with Option 3 are very expensive. EPA has preliminarily concluded that, even though the cost of Option 3 is significantly greater than Option 2 (because of installation, operation, and maintenance of reverse osmosis equipment), the costs are not unreasonable, given other factors. EPA is asking for comment on whether the effluent reduction benefits of Option 3 outweigh the high cost of the additional removal obtained through reverse osmosis. The Agency is particularly interested in comments on the ancillary effects of the less stringent Option 2 limitations.

As previously discussed, the Agency will be re-estimating the current performance at facilities that treat oily waste based on comments received and information collected in the August 1994 sampling episode and re-calculating the cost and impacts of Options 2 and 3. The data from the August 1994 sampling episode is included in the record for this proposal, but was not incorporated into calculations because it was not received with sufficient time to review and incorporate.

The Agency proposes to reject Option 1, because the technology does not provide for adequate control of the regulated pollutants. The Agency also proposes to reject Option 4 because Option 4 treatment technology results in a lower level of pollutant reductions in comparison to Option 3. Theoretically, Option 4 should provide for the maximum reduction of pollutants discharged due to the addition of carbon adsorption units, but specific pollutant concentrations increase across the carbon adsorption unit according to the analytical data collected.

Even though, as previously explained, BPT limitations are generally defined by the average effluent reduction performance of the best existing treatment systems, here, as was the case with the BPT metal-bearing wastes limitations, the options being proposed as the basis for BPT effluent limitations are based upon the treatment performance at a single facility. EPA concluded that existing performance at the other facilities is uniformly inadequate because many facilities that will be subject to the limitations for the Oily Waste Subcategory now commingle the oily wastewater with other wastes prior to treatment. The Agency has determined that the practice of mixing waste streams before treatment results in inadequate removal of the regulated pollutants of concern for the Oils Subcategory. Oily wastewater contains significant levels of organic and metals compounds. If the oily wastewater is mixed with other CWT wastewater, these organic and metals compounds are often found at non-detectable levels

prior to treatment because the oily wastewater is effectively diluted by the other wastewater to the point that the compounds are no longer detectible. The treatment system on which the Options 2 through 4 effluent limitations are based was designed specifically for the treatment of segregated oily wastewater.

See Section V.F. for further information regarding Monitoring to Demonstrate Compliance with the Regulation.

(iii) Subcategory C—Organics Subcategory. The Agency is today proposing BPT limitations for the Organics Subcategory for 39 pollutants. EPA identified two regulatory options for consideration in establishing BPT effluent reduction levels for this subcategory of the Centralized Waste Treatment Industry. For a more detailed discussion of the basis for the limitations and technologies selected see the Technical Development Document.

The two technology options considered for the Organics Subcategory BPT are:

- Option 1—Equalization, Air-Stripping, Biological Treatment, and Multi-media Filtration. BPT Option 1 effluent limitations are based on the following treatment system: equalization, two air-strippers in series equipped with a carbon adsorption unit for control of air emissions, biological treatment in the form of a sequential batch reactor (which is operated on a batch basis,) and finally multi-media filtration units for control of solids.
- Option 2—Equalization, Air-Stripping, Biological Treatment, Multi-Filtration, and Carbon Adsorption. Option 2 is the same as Option 1 except for the addition of carbon adsorption units.

The Agency is proposing to adopt BPT effluent limitations based on the Option 1 technology for the Organics Subcategory. The demonstrated effluent reductions attainable through Option 1 control technology represent the best practicable performance attainable through the application of currently available treatment measures. EPA's decision to propose effluent limitations defined by the removal performance of the Option 1 treatment systems is based primarily on consideration of several factors: the effluent reductions attainable, the economic achievability of the option and non-water quality environmental benefits. Once again, the age and size of the facilities, processes and other engineering factors were not considered pertinent to establishment of BPT limitations for this subcategory.

The Agency is proposing to adopt BPT limitations based on the removal performance of the Option 1 treatment system for the following reasons. First, the cost of achieving the pollutant discharge levels associated with the Option 1 treatment system is reasonable. The annualized costs for treatment are low.

According to the data collected, the Option 1 treatment system provides a greater effluent pollutant reduction level than the more expensive Option 2. Theoretically, Option 2 should provide for the maximum reduction of pollutants discharged due to the addition of carbon adsorption units, but specific pollutants of concern increased across the carbon adsorption unit according to the analytical data collected. Due to the poor performance of carbon adsorption in EPA's database for this industry, Option 2 is rejected. The poor performance may be a result of pH fluctuations in the carbon adsorption unit resulting in the solubilization of metals. Similar trends have been found for all of the data collected on carbon adsorption units in this industry. The EPA is soliciting comments, additional information, and performance data on carbon adsorption units used within the industry.

The Agency used biological treatment performance data from the OCPSF regulation to establish direct discharge limitations for BOD_5 and TSS, because the facility from which Option 1 and 2 limitations were derived is an indirect discharger and the treatment system is not operated to optimize removal of conventional pollutants. EPA has concluded that the transfer of this data is appropriate given the absence of adequate treatment technology for these pollutants at the only otherwise well-operated BPT CWT facility. Given the treatment of similar wastes at both OCPSF and centralized waste treatment facilities, use of the data is warranted. Moreover, EPA has every reason to believe that the same treatment systems will perform similarly when treating the wastes in this subcategory.

Once again, the selected BPT option is based on the performance of a single facility. Many facilities that are treating wastes that will be subject to effluent limitations for the Organic-Bearing Waste Subcategory also operate other industrial processes that generate much larger amounts of wastewater than the quantity of off-site generated organic waste receipts. The off-site generated organic waste receipts are directly mixed with the wastewater from the other industrial processes for treatment. Therefore, identifying facilities to sample for limitations development was difficult because the waste receipts and treatment unit effectiveness could not be properly characterized for off-site generated waste. The treatment system for which Options 1 and 2 was based upon was one of the few facilities identified which treated organic waste receipts separately from other on-site industrial wastewater.

See Section V.F. for further information regarding Monitoring to Demonstrate Compliance with the Regulation.

2. BCT

In today's rule, EPA is proposing effluent limitations guidelines and standards equivalent to the BPT guidelines for the conventional pollutants covered under BPT. In developing BCT limits, EPA considered whether there are technologies that achieve greater removals of conventional pollutants than proposed for BPT, and whether those technologies are cost-reasonable according to the BCT Cost Test. In all three subcategories, EPA identified no technologies that can achieve greater removals of conventional pollutants than proposed for BPT that are also cost-reasonable under the BCT Cost Test, and accordingly EPA proposes BCT effluent limitations equal to the proposed BPT effluent limitations guidelines and standards.

EPA may also decide to adopt BPT effluent limitations based on treatment technologies less stringent than the Regulatory Options that are the basis for today's proposal. Consequently, EPA has also evaluated the cost-reasonableness of BCT limits if EPA were to adopt BPT limitations based on less stringent technologies. For all three categories, this assessment does not support the adoption of BCT limitations for conventional pollutants that are more stringent than BPT limitations based on a reduced level of treatment.

3. BAT

EPA today is proposing BAT effluent limitations for all subcategories of the Centralized Waste Treatment Industry based on the same technologies selected for BPT for each subcategory. The BAT effluent limitations proposed today would control identified priority and non-conventional pollutants discharged from facilities.

EPA has not identified any more stringent treatment technology option which it considered to represent BAT level of control applicable to facilities in this industry for the metals, oils, and organics subcategories, EPA identified an add-on treatment technology—carbon adsorption—that should have

further increased removals of pollutants of concern. However, as explained above, EPA's data show increases rather than decreases in concentrations of specific pollutants of concern.

In the case for the Oily Waste Subcategory, EPA is co-proposing two options for BAT: Options 2 and 3. EPA seeks comment on whether it should adopt BAT limitations based on Oils Option 3 or Oils Option 4 if the Agency decides to adopt Option 3 for BPT limitations for this Subcategory. Both the Options 3 and 4 treatment systems achieve increasingly greater levels of pollutant removal than Option 2. Both represent demonstrated technologies currently in use in the industry. However, the total costs for the industry over Option 2 are high. Given the statutory injunction for the Agency to develop BAT effluent limitations that reflect the best control measure economically achievable, EPA believes BAT limitations which reflect these more stringent effluent pollutant reduction levels may be appropriate. This is particularly true if the additional treatment results in significant reduction in pollutants discharged into the environment and thus reasonable further progress towards the goal of the Act—elimination of the discharge of pollutants to navigable waters. The Agency welcomes comment on this issue.

EPA's data show that the costs of both Option 3 and Option 4 ($8.4 million and $10.0 million, respectively) are significantly greater than Option 2 ($0.87 million). Nevertheless, the cost of per-pound removals, $0.38 and $0.44, respectively, are reasonable. In addition, both Options 3 and 4 are economically achievable because there would be not change in the industry profitability status as a result of the adoption of either Option. As stated earlier, the impact of limitations based on *either* Option 1, 2, 3, or 4 is a decrease in profitability for one direct discharger with increased profitability for three others. However, adoption of BAT limits based on Oil Option 3 would provide approximately 150,000 pounds of additional removals of pollutants over Option 2 while BAT limitations based on costlier Option 4 would remove fewer pollutants. In the circumstances, EPA has preliminarily determined that is should not adopt Option 4 as the basis for BAT limits if it decides to base BPT on Option 2.

As with BPT limitations, EPA is proposing to require monitoring for compliance with the limitations at a point after treatment but prior to combining the CWT process wastewater with other wastewater. Many facilities operate other processes and the addition of this wastewater to CWT wastewater may result in dilution due to the difference in concentration of waste streams. Also, if a facility discharges non-contaminated stormwater, the proposed regulation is requiring monitoring of the CWT discharge prior to the addition of non-contaminated stormwater.

As with BPT, monitoring for compliance with the regulation for the Total Cyanide limitation at facilities in the Metals Subcategory which treat concentrated cyanide-bearing metal waste is after cyanide pretreatment and prior to metal treatment. This ensures that cyanide will not interfere with metals treatment.

See Section V.F. for further information regarding Monitoring to Demonstrate Compliance with the Regulation.

4. New Source Performance Standards

As previously noted, under Section 306 of the Act, new industrial direct dischargers must comply with standards which reflect the greatest degree of effluent reduction achievable through application of the best available demonstrated control technologies. Congress envisioned that new treatment systems could meet tighter controls than existing sources because of the opportunity to incorporate the most efficient processes and treatment systems into plant design. Therefore, Congress directed EPA to consider the best demonstrated process changes, in-plant controls, operating methods and end-of-pipe treatment technologies that reduce pollution to the maximum extent feasible.

EPA is proposing NSPS that would control the same conventional, priority, and non-conventional pollutants proposed for control by the BPT effluent limitations. The technologies used to control pollutants at existing facilities are fully applicable to new facilities. Furthermore, EPA has not identified any technologies or combinations of technologies that are demonstrated for new sources that are different from those used to establish BPT/BCT/BAT for existing sources. Therefore, EPA is establishing NSPS subcategories similar to the subcategories for existing facilities and proposing NSPS limitations that are identical to those proposed for BPT/BCT/BAT. Again, the Agency is requesting comments to provide information and data on other treatment systems that may be pertinent to the development of standards for this industry.

EPA is specifically considering whether it should adopt NSPS for the Oil Subcategory which reflect either Option 3 or Option 4 treatment technologies. EPA does not believe there would be any barriers to entry in this industry associated with adoption of Option 3 or 4. One currently operating facility has demonstrated the performance of these control technologies—EPA is assessing whether or not to adopt NSPS for the Oil Subcategory that reflects this more stringent level of control. EPA is soliciting comments on this issue.

See Section V.F. for further information regarding Monitoring to Demonstrate Compliance with the Regulation.

5. Pretreatment Standards for Existing Sources

Indirect dischargers in the Centralized Waste Treatment Industry, like the direct dischargers, accept for treatment wastes containing many priority and non-conventional pollutants. As in the case of direct dischargers, indirect dischargers may be expected to discharge many of these pollutants to POTWs at significant mass and concentration levels. EPA estimates that indirect dischargers annually discharge approximately 85 million pounds of pollutants.

Section 307(b) requires EPA to promulgate pretreatment standards to prevent pass-through of pollutants from POTWs to waters of the U.S. or to prevent pollutants from interfering with the operation of POTWs. EPA is establishing PSES for this industry to prevent pass-through of the same pollutants controlled by BAT from POTWs to waters of the U.S.

a. *Pass-through analysis.* Before proposing pretreatment standards, the Agency examines whether the pollutants discharged by the industry pass through a POTW or interfere with the POTW operation or sludge disposal practices. In determining whether pollutants pass through a POTW, the Agency compares the percentage of a pollutant removed by POTWs with the percentage of the pollutant removed by discharging facilities applying BAT. A pollutant is deemed to pass through the POTW when the average percentage removed nationwide by well-operated POTWs (those meeting secondary treatment requirements) is less than the percentage removed by facilities complying with BAT effluent limitations guidelines for that pollutant.

This approach to the definition of pass-through satisfies two competing objectives set by Congress: (1) That standards for indirect dischargers be equivalent to standards for direct dischargers and (2) that the treatment

capability and performance of the POTW be recognized and taken into account in regulating the discharge of pollutants from indirect dischargers. Rather than compare the mass or concentration of pollutants discharged by the POTW with the mass or concentration of pollutants discharged by a BAT facility, EPA compares the percentage of the pollutants removed by the plant with the POTW removal. EPA takes this approach because a comparison of mass or concentration of pollutants in a POTW effluent with pollutants in a BAT facility's effluent would not take into account the mass of pollutants discharged to the POTW from non-industrial sources nor the dilution of the pollutants in the POTW effluent to lower concentrations from the addition of large amounts of non-industrial wastewater. The volatile override test is the last step in determining is a pollutant will ''pass-through.'' If a pollutant has a Henry's Law Constant greater than 2.4×10^{-5} atm-m^3/mole, or 10^{-3}mg/m^3/mg/m^3, it is determined to ''pass-through'' and will be regulated by PSES regardless of the percent removal data.

For past effluent guidelines, a study of 50 well-operated POTWs was used for the pass-through analysis. Because the data collected for evaluating POTW removals included influent levels of pollutants that were close to the detection limit, the POTW data were edited to eliminate influent levels less than 10 times the minimum level and the corresponding effluent values, except in the cases where none of the influent concentrations exceeded 10 times the minimum level. In the latter case, where no influent data exceeded 10 times the minimum level, the data were edited to eliminate influent values less than 20 μg/l and the corresponding effluent values. These editing rules were used to allow for the possibility that low POTW removal simply reflected the low influent levels.

EPA then averaged the remaining influent data and also averaged the remaining effluent data from the 50 POTW database. The percent removals achieved for each pollutant was determined from these averaged influent and effluent levels. This percent removal was then compared to the percent removal for the BAT option treatment technology. Due to the large number of pollutants applicable for this industry, additional data from the Risk Reduction Engineering Laboratory (RREL) database was used to augment the POTW database for the pollutants for which the 50 POTW Study did not cover. Based on this analysis, 78 of the 87 pollutants regulated under Regulatory Option 1 (the combinations of Metals Option 3, Oils Option 2, and Organics Option 1) and 51 of the 87 pollutants regulated under Regulatory Option 2 (the combinations of Metals Option 3, Oils Option 3, and Organics Option 1) for BAT passed through POTWs and are proposed for regulation for PSES. The pollutants determined not to ''pass-through'' are listed in Table V.E–1.

TABLE V.E–1.—POLLUTANTS THAT DO NOT PASS-THROUGH POTWS FOR THE CENTRALIZED WASTE TREATMENT INDUSTRY

Subcategory	Pollutant
Metals subcategory ...	Barium.
Oils Subcategory—Option 2.	Nickel, Zinc, Tripropyleneglycol Methyl Ether.
Organics Subcategory.	Phenol, 2-Propanone, Lead, Pyridine, Zinc.

b. *Options considered.* The Agency today is proposing to establish pretreatment standards for existing sources (PSES) based on the same technologies as proposed for BPT and BAT for 78 of the 87 priority and non-conventional pollutants regulated under BAT for Regulatory Option 1 (the combinations of Metals Option 3, Oils Option 2, and Organics Option 1) and 81 of the 87 priority pollutants regulated under BAT for Regulatory Option 2 (the combinations of Metals Option 3, Oils Option 3, and Organics Option 1) . These standards would apply to existing facilities in all subcategories of the Centralized Waste Treatment Industry that discharge wastewater to publicly-owned treatment works (POTWs). These limitations were developed based on the same technologies as proposed today for BPT/BAT, as applicable to each of the affected subcategories. PSES set at these points would prevent pass-through of pollutants, help control sludge contamination and reduce air emissions.

EPA estimated the cost and economic impact of installing BPT/BAT PSES technologies at the indirect discharging facilities. The total estimated annualized cost in 1993 for all the subcategories is approximately $22.9 million (if PSES is Oils Option 3) and approximately $2.78 million (if PSES is Oils Option 2). EPA concluded the cost of installation of these control technologies, in the case of metal-bearing and organic-bearing waste streams, is clearly economically achievable. EPA's assessment shows none of the indirect discharging facilities in these subcategories go from a profitable to unprofitable status as a result of the installation of the necessary technology.

EPA is asking for comment on whether it should adopt Oils Option 3 as PSES for this subcategory, given that annual costs are approximately ten times greater than Option 2. EPA is particularly interested in comments on whether Option 3 is economically achievable, given the EPA economic assessment showing that despite its high cost, it results only in a slight increase in the number of facilities going from a profitable to unprofitable status. In the case of Oils Option 2, four of 31 indirect dischargers would go from a profitable to unprofitable status and for Option 3, six would experience a change from a profitable to unprofitable status. Additional information is provided in the Economic Impact Analysis.

The Agency considered the age, size, processes, other engineering factors, and non-water quality environmental impacts pertinent to facilities in developing PSES. The Agency did not identify any basis for establishing different PSES limitations based on age, size, processes, or other engineering factors. As previously explained for BPT, adoption of standards based on the proposed technologies for metal-bearing wastes and organic-bearing wastes would have important non-water quality effects. The metals standards should reduce landfill disposal of metals treatment residuals and the organic waste streams would reduce volatilization of organic compounds.

c. *Monitoring to Demonstrate Compliance with the Regulation.* See Section V.F.

6. Pretreatment Standards for New Sources

Section 307(c) of the Act requires EPA to promulgate pretreatment standards for new sources (PSNS) at the same time it promulgates new source performance standards (NSPS). New indirect discharging facilities, like new direct discharging facilities, have the opportunity to incorporate the best available demonstrated technologies, including process changes, in-facility controls, and end-of-pipe treatment technologies.

As set forth in Section VIII.E.4(a) of this preamble, EPA determined that a broad range of pollutants discharged by Centralized Waste Treatment Industry facilities pass-through POTWs. The same technologies discussed previously for BAT, NSPS, and PSES are available as the basis for PSNS.

EPA is proposing that pretreatment standards for new sources be set equal to NSPS for priority and non-

conventional pollutants for all subcategories. The Agency is proposing to establish PSNS for the same priority and non-conventional pollutants as are being proposed for NSPS. In addition, given the potential for dilution and the consequent impracticality of monitoring at the point of discharge, EPA is again proposing that monitoring to demonstrate compliance with these standards be required immediately following treatment of the regulated streams.

EPA considered the cost of the proposed PSNS technology for new facilities. EPA concluded that such costs are not so great as to present a barrier to entry, as demonstrated by the fact that currently operating facilities are using these technologies. Again, EPA is requesting comment on whether it should adopt PSNS for the Oily Waste Subcategory that reflects effluent reduction levels achievable through either Option 3 or Option 4 treatment systems. The Agency considered energy requirements and other non-water quality environmental impacts and found no basis for any different standards than the selected PSNS.

F. Monitoring To Demonstrate Compliance With the Regulation

The effluent limitations EPA is proposing today apply *only* to discharges resulting from treatment of the subcategory wastes and not to mixtures of subcategory wastes with other wastes or mixtures of different subcategory wastes. In addition, these effluent limitations do not apply to discharges from the treatment of subcategory wastes that are mixed prior to or after treatment with other wastewater streams prior to discharge. EPA has concluded that it is impractical and infeasible to set limits for the pollutants proposed to be regulated in this category at the point of discharge for mixed waste streams, given the potential for mixing to avoid achievement of the required effluent reductions.

Thus, many facilities in this industry may operate other processes which generate wastes requiring treatment and may add these wastes to CWT wastes before treatment and discharge. This may result in dilution rather than required treatment of CWT wastes due to the difference in concentration of waste streams. In addition, if a facility discharges its non-contaminated stormwater, implementation of this proposal requires a facility to monitor the CWT discharge prior to the addition of non-contaminated stormwater. Similarly, for facilities which treat concentrated cyanide-bearing metal wastes, the limitations for Total Cyanide are based on cyanide levels that are demonstrated to be achieved after cyanide pretreatment and prior to metals precipitation. Separate pretreatment of cyanide in metal-bearing waste streams is necessary in order to ensure that cyanide will not interfere with metals treatment. Consequently, EPA has preliminarily determined that it will require compliance monitoring immediately following treatment of subcategory waste streams (e.g., metal-bearing, oily, or organic-bearing, as appropriate) unless the facility can demonstrate that it is achieving the required effluent reduction associated with separate treatment of the waste streams in a mixed waste treatment system. (See further discussion of this issue below at Section VIII.)

G. Determination of Long-Term Averages, Variability Factors, and Limitations for BPT

The proposed effluent limitations and standards in today's notice are based upon statistical procedures that estimate long-term averages and variability factors. The following sections describe the statistical methodology used to develop long-term averages, variability factors, and limitations for BPT. The limitations for BCT, BAT, NSPS, PSES, and PSNS are based upon the limitations for BPT for all pollutants.

The proposed limitations for pollutants for each option, as presented in today's notice, are provided as daily maximums and maximums for monthly averages. In most cases, the daily maximum limitation for a pollutant in an option is the product of the pollutant long-term average and the group daily variability factor. In most cases, the maximum for monthly average limitation for a pollutant for an option is the product of the pollutant long-term average and the group monthly variability factor. The procedures used to estimate the pollutant long-term averages and group variability factors are briefly described below. A more detailed explanation is provided in the statistical support document.

The long-term averages, variability factors, and limitations were based upon pollutant concentrations collected from two sources: EPA sampling episodes and the 1991 Detailed Monitoring Questionnaire. These data sources are described in Sections IV.B. and IV.D. (Data from the same facility but from different sources were analyzed as though each source provided information about a different facility.)

The long-term average for each pollutant was calculated for each facility by arithmetically averaging the pollutant concentrations. The pollutant long-term average for an option was the median of the long-term averages from selected facilities with the BPT technology basis for the option.

The daily variability factor for each pollutant at each facility is the ratio of the estimated 99th percentile of the distribution of the daily pollutant concentration values divided by the expected value, or mean, of the distribution of the daily values. The monthly variability factor for each pollutant at each facility is the estimated 95th percentile of the distribution of monthly averages of the daily concentration values divided by the expected value of the monthly averages. The number of measurements used to calculate the monthly averages corresponds to the number of days that the pollutant is assumed to be monitored during the month. For example, the volatile organic compounds are expected to be monitored once a week (which is approximately four times a month); therefore, the monthly variability factor was based upon the distribution of four-day averages. Certain pollutants such as BOD_5 are expected to be monitored daily; therefore, the monthly variability factor was based upon the distribution of 20-day averages (most facilities operate only on weekdays of which there are approximately 20 in each month). The assumed monitoring frequency of each pollutant is identified in Table V.G–1.

TABLE V.G–1.—MONITORING FREQUENCIES USED TO ESTIMATE MONTHLY VARIABILITY FACTORS

Assumed Daily Monitoring Frequency	
Aluminum	Manganese.
Antimony	Mercury.
Arsenic	Molybdenum.
Barium	Nickel.
BOD_5	Oil and Grease.
Cadmium	Silver.
Chromium	Tin.
Cobalt	Titanium.
Copper	TOC.
Iron	Total Cyanide.
Lead	TSS.
Magnesium	Zinc.
Assumed Weekly Monitoring Frequency	
Hexavalent Chromium	Methylene Chloride.
1,1,1,2-Tetrachloroethane	m-Xylene.
1,1,1-Trichloroethane	n-Decane.
1,1,2-Trichloroethane	n-Docosane.
1,1-Dichloroethane	n-Dodecane.

TABLE V.G–1.—MONITORING FREQUENCIES USED TO ESTIMATE MONTHLY VARIABILITY FACTORS—Continued

1,2,3-Trichloropropane	n-Eicosane.
1,2-Dibromoethane	n-Hexacosane.
1,2-Dichloroethane	n-Hexadecane.
trans-1,2-dichloroethene	n-Octadecane.
2,3-Dichloroaniline	n-Tetradecane.
2-Propanone	o&p-Xylene.
4-chloro-3-methyl phenol	o-Cresol.
4-Methyl-2-Pentanone	Phenol.
Acetophenone	Pyridine.
Benzene	p-Cresol.
Benzoic Acid	Tetrachloroethene.
Butanone	Tetrachloromethane.
Carbon Disulfide	Toluene.
Chloroform	Trichloroethene.
Diethyl ether	Tripropyleneglycol methyl ether.
Hexanoic Acid	
Ethylbenzene	Vinyl Chloride.

The variability factors for each option were developed for groups of pollutants in three steps. These steps are described here for the daily variability factors. Similar steps were used to develop monthly variability factors. The first step was to develop a daily variability factor for each pollutant at each facility by fitting a modified delta-lognormal distribution to the daily pollutant concentration values from each facility. (For monthly variability factors, the modified delta-lognormal distribution was fit to the monthly averages.) The second step was to develop one daily variability factor for each pollutant for each option by averaging the daily variability factors for the selected facilities with the technology basis for the option. The third step was to develop ''group'' daily variability factors for each option. Each group contained pollutants that were chemically similar. The daily variability factor for each group was the median of the daily variability factors obtained in the second step for the pollutants in the group and option. In some cases, none of the daily variability factors for the pollutants within a group could be estimated. In some of these cases, the daily variability factor for the group was transferred from the other groups in the option that used the same fraction in the chemical analysis. This transferred group daily variability factor was the median of the daily variability factors from the other groups. In the remaining cases where the group daily variability factors could not be estimated, the group daily variability factors were transferred from chemically similar pollutants or from other options within the subcategory. The development of daily and monthly variability factors is described further in the statistical support document.

Because EPA is assuming that some pollutants (BOD_5, TSS, oil and grease, metals, total cyanide, and TOC) will be monitored daily, the 20-day variability factors were based on the distribution of 20-day averages. If concentrations measured on consecutive days are positively correlated, then autocorrelation would have an effect on the 20-day variability factors (long-term averages are not affected by autocorrelation). However, the centralized waste treatment data used to calculate the 20-day variability factors were, in most cases, not consecutive daily measurements. Therefore, at this time, EPA does not have sufficient data to examine in detail and incorporate (if statistically significant) any autocorrelation between concentrations measured on adjacent days. Furthermore, EPA believes that autocorrelation may not be present in daily measurements from wastewater from this industry. Unlike other industries, where the industrial processes are expected to produce the same type of wastewater from one day to the next, the wastewater from Centralized Waste Treatment Industry is generated from treating wastes from different sources and industrial processes. The wastes treated on a given day will often be different than the waste treated on the following day. Because of this, autocorrelation would not be expected to be present in measurements of wastewater from the Centralized Waste Treatment Industry. In Section VIII.B.7, EPA requests additional wastewater monitoring data. EPA will use these data to further evaluate autocorrelation in the data for the pollutants that will be monitored daily.

H. Regulatory Implementation

1. Applicability

The regulation proposed today is just that—a proposed regulation. While today's proposal represents EPA's best judgment at this time, the effluent limitations and standards may still change based on additional information or data submitted by commenters or developed by the Agency. Consequently, the permit writer should consider the proposed limits in developing permit limits. Although the information provided in the Development Document may provide useful information and guidance to permit writers in determining best professional judgment permit limits, the permit writer will still need to justify any permit limits based on the conditions at the individual facility.

2. Upset and Bypass Provisions

A ''bypass'' is an intentional diversion of waste streams from any portion of a treatment facility. An ''upset'' is an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. EPA's regulations concerning bypasses and upsets are set forth at 40 CFR 122.41(m) and (n).

3. Variances and Modifications

The CWA requires application of the effluent limitations established pursuant to Section 301 or the pretreatment standards of Section 307 to all direct and indirect dischargers. However, the statute provides for the modification of these national requirements in a limited number of circumstances. Moreover, the Agency has established administrative mechanisms to provide an opportunity for relief from the application of national effluent limitations guidelines and pretreatment standards for categories of existing sources for priority, conventional and non-conventional pollutants.

a. *Fundamentally Different Factors Variances.* EPA will develop effluent limitations or standards different from the otherwise applicable requirements if an individual existing discharging facility is fundamentally different with respect to factors considered in establishing the limitation or standards applicable to the individual facility. Such a modification is known as a ''fundamentally different factors'' (FDF) variance.

Early on, EPA, by regulation, provided for FDF modifications from BPT effluent limitations, BAT limitations for priority and non-conventional pollutants and BCT limitation for conventional pollutants for direct dischargers. For indirect dischargers, EPA provided for FDF modifications from pretreatment standards for existing facilities. FDF variances for priority pollutants were challenged judicially and ultimately sustained by the Supreme Court. *Chemical Manufacturers Ass'n* v. *NRDC,* 479 U.S. 116 (1985).

Subsequently, in the Water Quality Act of 1987, Congress added new Section 301(n) of the Act explicitly to authorize modification of the otherwise applicable BAT effluent limitations or categorical pretreatment standards for existing sources if a facility is fundamentally different with respect to the factors specified in Section 304 (other than costs) from those considered by EPA in establishing the effluent limitations or pretreatment standard. Section 301(n) also defined the conditions under EPA may establish alternative requirements. Under Section 301(n), an application for approval of FDF variance must be based solely on 1) information submitted during the rulemaking raising the factors that are fundamentally different or 2) information the applicant did not have an opportunity to submit. The alternate limitation or standard must be no less stringent than justified by the difference and not result in markedly more adverse non-water quality environmental impacts than the national limitation or standard.

EPA regulations at 40 CFR Part 125 Subpart D, authorizing the Regional Administrators to establish alternative limitations and standards, further detail the substantive criteria used to evaluate FDF variance requests for existing direct dischargers. Thus, 40 CFR 125.31(d) identifies six factors (e.g., volume of process wastewater, age and size of a discharger's facility) that may be considered in determining if a facility is fundamentally different. The Agency must determine whether, on the basis of one or more of these factors, the facility in question is fundamentally different from the facilities and factors considered by the EPA in developing the nationally applicable effluent guidelines. The regulation also lists four other factors (e.g., infeasibility of installation within the time allowed or a discharger's ability to pay) that may not provide a basis for an FDF variance. In addition, under 40 CFR 125.31(b)(3), a request for limitations less stringent than the national limitation may be approved only if compliance with the national limitations would result in either (a) a removal cost wholly out of proportion to the removal cost considered during development of the national limitations, or (b) a non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the national limits. EPA regulations provide for an FDF variance for existing indirect discharger at 40 CFR 403.13. The conditions for approval of a request to modify applicable pretreatment standards and factors considered are the same as those for direct dischargers.

The legislative history of Section 301(n) underscores the necessity for the FDF variance applicant to establish eligibility for the variance. EPA's regulations at 40 CFR 125.32(b)(1) are explicit in imposing this burden upon the applicant. The applicant must show that the factors relating to the discharge controlled by the applicant's permit which are claimed to be fundamentally different are, in fact, fundamentally different from those factors considered by the EPA in establishing the applicable guidelines. The pretreatment regulation incorporate a similar requirement at 40 CFR 403.13(h)(9).

An FDF variance is not available to a new source subject to NSPS or PSES.

b. *Economic Variances.* Section 301(c) of the CWA authorizes a variance from the otherwise applicable BAT effluent guidelines for non-conventional pollutants due to economic factors. The request for a variance from effluent limitations developed from BAT guidelines must normally be filed by the discharger during the public notice period for the draft permit. Other filing time periods may apply, as specified in 40 CFR 122.21(l)(2). Specific guidance for this type of variance is available from EPA's Office of Wastewater Management.

c. *Water Quality Variances.* Section 301(g) of the CWA authorizes a variance from BAT effluent guidelines for certain nonconventional pollutants due to localized environmental factors. These pollutants include ammonia, chlorine, color, iron, and total phenols.

d. *Permit modifications.* Even after EPA (or an authorized State) has issued a final permit to a direct discharger, the permit may still be modified under certain conditions. (When a permit modification is under consideration, however, all other permit conditions remain in effect.) A permit modification may be triggered in several circumstances. These could include a regulatory inspection or information submitted by the permittee that reveals the need for modification. Any interested person may request modification of a permit modification be made. There are two classifications of modifications: major and minor. From a procedural standpoint, they differ primarily with respect to the public notice requirements. Major modifications require public notice while minor modifications do not. Virtually any modifications that results in less stringent conditions is treated as a major modification, with provisions for public notice and comment. Conditions that would necessitate a major modification of a permit are described in 40 CFR 122.62. Minor modifications are generally non-substantive changes. The conditions for minor modification are described in 40 CFR 122.63.

e. *Removal credits.* As described previously, many industrial facilities discharge large quantities of pollutants to POTWs where their wastewater mix with wastewater from other sources, domestic sewage from private residences and run-off from various sources prior to treatment and discharge by the POTW. Industrial discharges frequently contain pollutants that are generally not removed as effectively by treatment at the POTWs as by the industries themselves.

The introduction of pollutants to a POTW from industrial discharges may pose several problems. These include potential interference with the POTW's operation or pass-through of pollutants

if inadequately treated. As discussed, Congress, in Section 307(b) of the Act, directed EPA to establish pretreatment standards to prevent these potential problems. Congress also recognized that, in certain instances, POTWs could provide some or all of the treatment of an industrial user's wastewater that would be required pursuant to the pretreatment standard. Consequently, Congress established a discretionary program for POTWs to grant ''removal credits'' to their indirect dischargers. The credit, in the form of a less stringent pretreatment standard, allows an increased concentration of a pollutant in the flow from the indirect discharger's facility to the POTW.

Section 307(b) of the CWA establishes a three-part test for obtaining removal credit authority for a given pollutant. Removal credits may be authorized only if (1) the POTW ''removes all or any part of such toxic pollutant,'' (2) the POTW's ultimate discharge would ''not violate that effluent limitation, or standard which would be applicable to that toxic pollutant if it were discharged'' directly rather than through a POTW and (3) the POTW's discharge would ''not prevent sludge use and disposal by such [POTW] in accordance with Section [405]. . . .'' Section 307(b).

EPA has promulgated removal credit regulations in 40 CFR 403.7. The United States Court of Appeals for the Third Circuit has interpreted the statute to require EPA to promulgate comprehensive sewage sludge regulations before any removal credits could be authorized. *NRDC* v. *EPA*, 790 F.2d 289, 292 (3rd Cir. 1986) *cert. denied*. 479 U.S. 1084 (1987). Congress made this explicit in the Water Quality Act of 1987 which provided that EPA could not authorize any removal credits until it issued the sewage sludge use and disposal regulations required by Section 405(d)(2)(a)(ii).

Section 405 of the CWA requires EPA to promulgate regulations that establish standards for sewage sludge when used or disposed for various purposes. These standards must include sewage sludge management standards as well as numerical limits for pollutants that may be present in sewage sludge in concentrations which may adversely affect public health and the environment. Section 405 requires EPA to develop these standards in two phases. On November 25, 1992, EPA promulgated the Round One sewage sludge regulations establishing standards, including numerical pollutant limits, for the use or disposal of sewage sludge. 58 FR 9248. EPA established pollutant limits for ten metals when sewage sludge is applied to land, for three metals when it is disposed of on a surface disposal site and for seven metals and a total hydrocarbon operational standard, a surrogate for organic pollutant emissions, when sewage sludge is incinerated. These requirements are codified at 40 CFR Part 503.

The Phase One regulations partially fulfilled the Agency's commitment under the terms of a consent decree that settled a citizens suit to compel issuance of the sludge regulations. *Gearhart, et al.* v. *Reilly*, Civil No. 89–6266–JO (D. Ore). Under the terms of that decree, EPA must propose and take final action on the Round Two sewage sludge regulations by December 15, 2001.

At the same time EPA promulgated the Round One regulations, EPA also amended its pretreatment regulations to provide that removal credits would be available for certain pollutants regulated in the sewage sludge regulations. *See* 58 FR 9386. The amendments to Part 403 provide that removal credits may be made potentially available for the following pollutants:

(1) If a POTW applies its sewage sludge to the land for beneficial uses, disposes of it on surface disposal sites or incinerates it, removal credits may be available, depending on which use or disposal method is selected (so long as the POTW complies with the requirements in Part 503). When sewage sludge is applied to land, removal credits may be available for ten metals. When sewage sludge is disposed of on a surface disposal site, removal credits may be available for three metals. When the sewage sludge is incinerated, removal credits may be available for seven metals and for 57 organic pollutants. *See* 40 CFR 403.7(a)(3)(iv)(A).

(2) In addition, when sewage sludge is used on land or disposed of on a surface disposal site or incinerated, removal credits may also be available for additional pollutants so long as the concentration of the pollutant in sludge does not exceed a concentration level established in Part 403. When sewage sludge is applied to land, removal credits may be available for two additional metals and 14 organic pollutants. When the sewage sludge is disposed of on a surface disposal site, removal credits may be available for seven additional metals and 13 organic pollutants. When the sewage sludge is incinerated, removal credits may be available for three other metals. *See* 40 CFR 403.7(a)(3)(iv)(B).

(3) When a POTW disposes of its sewage sludge in a municipal solid waste landfill that meets the criteria of 40 CFR Part 258 (MSWLF), removal credits may be available for any pollutant in the POTW's sewage sludge. *See* 40 CFR 403.7(a)(3)(iv)(C). Thus, given compliance with the requirements of EPA's removal credit regulations,[3] following promulgation of the pretreatment standards being proposed here, removal credits may be authorized for any pollutant subject to pretreatment standards if the applying POTW disposes of its sewage sludge in a MSWLF that meets the requirements of 40 CFR Part 258. If the POTW uses or disposes of its sewage sludge by land application, surface disposal or incineration, removal credits may be available for the following metal pollutants (depending on the method of use or disposal): arsenic, cadmium, chromium, copper, iron, lead, mercury, molybdenum, nickel, selenium and zinc. Given compliance with Section 403.7, removal credits may be available for the following organic pollutants (depending on the method of use or disposal) if the POTW uses or disposes of its sewage sludge: benzene, 1,1-dichloroethane, 1,2-dibromoethane, ethylbenzene, methylene chloride, toluene, tetrachloroethene, 1,1,1-trichloroethane, 1,1,2-trichloroethane and trans-1,2-dichloroethene.

Some facilities may be interested in obtaining removal credit authorization for other pollutants being considered for regulation in this rulemaking for which removal credit authorization would not otherwise be available under Part 403. Under Sections 307(b) and 405 of the CWA, EPA may authorize removal credits only when EPA determines that, if removal credits are authorized, that the increased discharges of a pollutant to POTWs resulting from removal credits will not affect POTW sewage sludge use or disposal adversely. As discussed in the preamble to amendment to the Part 403 regulations (58 FR 9382–83), EPA has interpreted these sections to authorize removal credits for a pollutant only in one of two circumstances. Removal credits may be authorized for any categorical pollutant (1) for which EPA has established a numerical pollutant limit in Part 503; or (2) which EPA has determined will not threaten human health and the environment when used or disposed of in sewage sludge. The pollutants described in paragraphs (1)–(3) above

[3] Under Section 403.7, a POTW is authorized to give removal credits only under certain conditions. These include applying for, and obtaining, approval from the Regional Administrator (or Director of a State NPDES program with an approved pretreatment program), a showing of consistent pollutant removal and an approved pretreatment program. *See* 40 CFR 403.7(a)(3)(I), (ii) and (iii).

include all those pollutants that EPA either specifically regulated in Part 503 or evaluated for regulation and determined would not adversely affect sludge use and disposal.

Consequently, in the case of a pollutant for which EPA did not perform a risk assessment in developing the Phase One sewage sludge regulations, removal credit for pollutants will only be available when the Agency determines either a safe level for the pollutant in sewage sludge or that regulation of the pollutant is unnecessary to protect public health and the environment from the reasonably anticipated adverse effects of such a pollutant.[4] Therefore, any person seeking to add additional categorical pollutants to the list for which removal credits are now available would need to submit information to the Agency to support such a determination. The basis for such a determination may include information showing the absence of risks for the pollutant (generally established through an environmental pathway risk assessment such as EPA used for Phase One) or data establishing the pollutant's presence in sewage sludge at low levels relative to risk levels or both. Parties, however, may submit whatever information they conclude is sufficient to establish either the absence of any potential for harm from the presence of the pollutant in sewage sludge or data demonstrating a ''safe'' level for the pollutant in sludge. Following submission of such a demonstration, EPA will review the data and determine whether or not it should propose to amend the list of pollutants for which removal credits would be available.

EPA has already begun the process of evaluating a number of pollutants for adverse potential to human health and the environment when present in sewage sludge. In May, 1993, pursuant to the terms of the consent decree in the *Gearhart* case, the Agency notified the United States District Court for the District of Oregon that, based on the information then available at that time, it intended to propose 31 pollutants for regulation in the Round Two sewage sludge regulations. These are acetic acid (2,4-dichlorophenoxy), aluminum, antimony, asbestos, barium, beryllium, boron, butanone, carbon disulfide, cresol (p-), cyanides (soluble salts and complexes), dioxins/dibenzofurans (all monochloro to octochloro congeners), endsulfan-II, fluoride, manganese, methylene chloride, nitrate, nitrite, pentachloro-nitrobenzene, phenol, phthalate (bis-2-ethylhexyl), polychlorinated biphenyls (co-planar), propanone (2-), silver, thallium, tin, titanium, toluene, trichlorophenoxyacetic acid (2, 4, 5-), trichlorphenoxypropionic acid ([2—(2, 4, 5-)], and vanadium.

The Round Two regulations are not scheduled for proposal until December, 1999 and promulgation in December 2001. However, given the necessary factual showing, as detailed above, EPA could conclude before the contemplated proposal and promulgation dates that regulation of some of these pollutants is not necessary. In those circumstances, EPA could propose that removal credits should be authorized for such pollutants before promulgation of the Round Two sewage sludge regulations. However, given the Agency's commitment to promulgation of effluent limitations and guidelines under court-supervised deadlines, it may not be possible to complete review of removal credit authorization requests by the time EPA must promulgate these guidelines and standards.

4. Relationship of Effluent Limitations to NPDES Permits and Monitoring Requirements

Effluent limitations act as a primary mechanism to control the discharges of pollutants to waters of the United States. These limitations are applied to individual facilities through NPDES permits issued by the EPA or authorized States under Section 402 of the Act.

The Agency has developed the limitations and standards for this proposed rule to cover the discharge of pollutants for this industrial category. In specific cases, the NPDES permitting authority may elect to establish technology-based permit limits for pollutants not covered by this proposed regulation. In addition, if State water quality standards or other provisions of State or Federal Law require limits on pollutants not covered by this regulation (or require more stringent limits on covered pollutants), the permitting authority must apply those limitations.

For determination of effluent limits where there are multiple categories and subcategories, the effluent guidelines are applied using a flow-weighted combination of the appropriate guideline for each category or subcategory. Where a facility treats a CWT waste stream and process wastewater from other industrial operations, the effluent guidelines would be applied by using a flow-weighted combination of the BPT/BAT/PSES limit for the CWT subcategory and the other industrial operations to derive the appropriate limitations. However, as stated above, if State water quality standards or other provisions of State or Federal Law require limits on pollutants not covered by this regulation (or require more stringent limits on covered pollutants), the permitting authority must apply those limitations regardless of the limitation derived using the flow-weighted combinations.

Working in conjunction with the effluent limitations are the monitoring conditions set out in a NPDES permit. An integral part of the monitoring conditions is the point at a facility must monitor to demonstrate compliance. The point at which a sample is collected can have a dramatic effect on the monitoring results for that facility. Therefore, it may be necessary to require internal monitoring points in order to assure compliance. Authority to address internal waste streams is provided in 40 CFR 122.44(I)(1)(iii) and 122.45(h). Today's proposed integrated rule establishes several internal monitoring points to ensure compliance with the effluent guideline limitations. Permit writers may establish additional internal monitoring points to the extent consistent with EPA's regulations.

5. Implementation for Facilities with Operations in Multiple Subcategories

According to the 1991 Waste Treatment Industry Questionnaire, thirty percent of facilities in the Centralized Waste Treatment Industry have been identified as accepting waste that is included in two or more of the subcategories being proposed for regulation here. In other words, the facilities actively accept a variety of waste types. This is not to be confused with the fact that metal-bearing waste streams may include low level organics or that oily wastes may include metals due to the origin of the waste stream accepted for treatment.

The limitations and standards EPA is today proposing are based on treatment of wastes that have not been commingled for treatment without the appropriate pretreatment. EPA's sampling program and other data in the record demonstrate that mixing of wastes before treatment does not provide appropriate pollutant removals but may merely mask the absence of removal through dilution. Consequently, the proposal required monitoring immediately following the treatment of the regulated waste stream to demonstrate compliance. Wastes

[4] In the Round One sewage sludge regulation, EPA concluded, on the basis of risk assessments, that certain pollutants (*see* Appendix G to Part 403) did not pose an unreasonable risk to human health and the environment and did not require the establishment of sewage sludge pollutant limits. As discussed above, so long as the concentration of these pollutants in sewage sludge are lower than a prescribed level, removal credits are authorized for such pollutants.

treated in the Centralized Waste Treatment Industry have been characterized as concentrated, difficult to treat wastewater, sludges, off-spec products, etc. and are often unlike waste streams found at other categorical industries. Therefore, special attention should be taken when facilities determine which waste streams are accepted for treatment.

If a facility accepts for treatment a mixture of waste types, it is still subject to limitations and standards (and monitoring to demonstrate compliance) that reflect the treatment performance achievable for the unmixed streams. In other words, if a facility accepts for treatment metal-bearing and oily waste, the facility must comply with the limitations and standards based on a treatment system which employs emulsion-breaking, ultrafiltration, and carbon adsorption to ''adequately treat'' the oily waste for the oils and organics constituents. Similarly, discharges from the metal-bearing stream must comply with the limitations and standards defined by a treatment system employing selective metals precipitation. Compliance with the limitations and standards must be demonstrated following treatment. EPA has concluded that if oily wastes that have not been pretreated are mixed with the metal-bearing waste stream for selective metals precipitation, the unit will not meet the required performance level for metals.

The effluent guideline would be applied by using a flow-weighted combination of BPT/BAT/PSES limitations for the subcategories of concern to derive the facility limit. The permit writer may establish limitations and standards based on separate treatment for each subcategory's operation.

Mixing of dissimilar waste streams may result in dilution of pollutants because the waste streams do not contain the same pollutants or may result in dilution of the stream to the point that pollutants are non-detectible. For waste streams which contain the same pollutants at similar concentration, pretreatment may not be necessary.

The Agency attempted to establish one set of limitations for facilities in all subcategories, but due to the fact that performances levels and the pollutants of concern are not the same for all subcategories, this task could not be done. The Agency solicits comment on its approach to multiple subcategory facilities. EPA is requesting commenters to supply additional data which they may have that would aid in characterizing the efficiency of waste treatment systems for facilities which commingle waste from multiple subcategories prior to treatment.

EPA considered and rejected another approach which did not require monitoring to demonstrate compliance with CWT limitations and standards in the case of facilities which mixed categorical waste streams with CWT wastes. Rather, for such facilities, permit writers would require the facility to identify the sources of the CWT wastestreams and then develop facility limits applying the combined waste stream formula, using the applicable guidelines and limitations for the CWT waste source. If CWT wastes were treated separately at such a facility, then the permit writer would just apply the CWT limitations and standards in developing the limits. EPA is asking for comment on whether to reconsider such an approach.

VI. Costs and Impacts of Regulatory Alternatives

A. Costs

The Agency estimated the cost for CWT facilities to achieve each of the effluent limitations and standards proposed today. These estimated costs are summarized in this section and discussed in more detail in the Technical Development Document. All cost estimates in this section are expressed in terms of 1993 dollars. The cost components reported in this section represent estimates of the investment cost of purchasing and installing equipment, the annual operating and maintenance costs associated with that equipment, additional costs for discharge monitoring, and costs for facilities to modify existing RCRA permits. In Sections VI.B., costs are expressed in terms of a different cost component, total annualized cost. The total annualized cost, which is used to estimate economic impacts, better describes the actual compliance cost that a company will incur, allowing for interest, depreciation, and taxes. A summary of the economic impact analysis for the proposed regulation is contained in Section VI.B. of today's notice. See also the economic impact analysis.

1. BPT Costs

The Agency estimated the cost of implementing the proposed BPT effluent limitations guidelines and standards by calculating the engineering costs of meeting the required effluent reductions for each direct discharging CWT. This facility-specific engineering cost assessment for BPT began with a review of present waste treatment technologies. For facilities without treatment technology in-place equivalent to the BPT technology, EPA estimated the cost to upgrade its treatment technology, to use additional treatment chemicals to achieve the new discharge standards, and to employ additional personnel, where applicable for the option. The only facilities given no cost for compliance were facilities with the treatment-in-place prescribed for that option. The Agency believes that this approach overestimates the costs to achieve the proposed BPT because many facilities can achieve BPT level discharges without using all of the components of the technology basis described in Section V.E. The Agency solicits comment on these costing assumptions. Table VI.A–1 summarizes, by subcategory, the capital expenditures and annual O&M costs for implementing BPT. Costs are presented for Regulatory Option 1 (the combination of Metals Option 3, Oils Option 2, and Organics Option 1) and Regulatory Option 2 (the combination of Metals Option 3, Oils Option 3, and Organics Option 1). The capital expenditures for the process change component of BPT are estimated to be $17.7 million with annual O&M costs of $14.3 million for Regulatory Option 1 and $20.6 million with annual O&M costs of $21.7 million for Regulatory Option 2.

TABLE VI.A–1.—COST OF IMPLEMENTING BPT REGULATIONS

[In millions of 1993 dollars]

Subcategory	No. of facilities [1]	Capital costs	Annual O&M costs
Metals Treatment and Recovery	12	15.4	10.5
Oils Treatment and Recovery—Regulatory Option 1	4	1.02	0.779
Oils Treatment and Recovery—Regulatory Option 2	4	3.84	8.15
Organics Treatment	6	1.32	3.06
Regulatory Option 1	16	17.7	14.3
Regulatory Option 2	16	20.6	21.7

[1] There are 16 direct dischargers. Because some direct dischargers include operations in more than one subcategory, the sum of the facilities with operations in any one subcategory exceeds the total number of facilities.

2. BCT/BAT Costs

The Agency estimated that there would be no cost of compliance for implementing BCT/BAT, because the technology is identical to BPT and the costs are included with BPT.

3. PSES Costs

The Agency estimated the cost for implementing PSES with the same assumptions and methodology used to estimate cost of implementing BAT. Table VI.A–2 summarizes, by subcategory, the capital expenditures and annual O&M costs for implementing PSES. Costs are presented for Regulatory Option 1 (the combination of Metals Option 3, Oils Option 2, and Organics Option 1) and Regulatory Option 2 (the combination of Metals Option 3, Oils Option 3, and Organics Option 1). The capital expenditures for the process change component of PSES are estimated to be $43.8 million with annual O&M costs of $26.8 million for Regulatory Option 1 and $52.6 million with annual O&M costs of $45.9 million for Regulatory Option 2.

TABLE VI.A–2.—COST OF IMPLEMENTING PSES REGULATIONS

[In millions of 1993 dollars]

Subcategory	No. of facilities[1]	Capital costs	Annual O&M costs
Metals Treatment and Recovery	44	28.5	23.0
Oils Treatment and Recovery—Regulatory Option 1	31	4.21	2.37
Oils Treatment and Recovery—Regulatory Option 2	31	13.0	21.5
Organics Treatment	16	11.1	1.41
Regulatory Option 1	56	43.8	26.8
Regulatory Option 2	56	52.6	45.9

[1] There are 16 direct dischargers. Because some direct dischargers include operations in more than one subcategory, the sum of the facilities with operations in any one subcategory exceeds the total number of facilities.

B. Pollutant Reductions

The Agency estimated the reduction in the mass of pollutants that would be discharged from CWT facilities after the implementation of the regulations being proposed today.

1. Conventional Pollutant Reductions

EPA has calculated how much adoption of the proposed BPT/BCT limitations would reduce the total quantity of conventional pollutants that are discharged. To do this, for each subcategory, the Agency developed an estimate of the long- term average loading (LTA) of BOD_5, TSS, and Oil and Grease that would be discharged after the implementation of BPT. Next, these BPT/BCT LTAs for BOD_5, TSS, and Oil and Grease were multiplied by 1989 wastewater flows for each direct discharging facility in the subcategory to calculate BPT/BCT mass discharge loadings for BOD_5, TSS, and Oil and Grease for each facility. The BPT/BCT mass discharge loadings were subtracted from the estimated current loadings to calculate the pollutant reductions for each facility. Each subcategory's BPT/BCT pollutant reduction was summed to estimate the total facility's pollutant reduction for those facilities treating wastes in multiple subcategories. Subcategory reductions, obviously, were obtained by summing individual subcategory results. The Agency estimates that the proposed regulations will reduce BOD_5 discharges by approximately 34.5 million pounds per year for Regulatory Option 1 (the combination of Metals Option 3, Oils Option 2, and Organics Option 1) and 36.9 million pounds per year for Regulatory Option 2 (the combination of Metals Option 3, Oils Option 3, and Organics Option 1); TSS discharges by approximately 30.3 million pounds per year for both Regulatory Options; and Oil and Grease discharges by approximately 52.4 million pounds per year for Regulatory Option 1 (the combination of Metals Option 3, Oils Option 2, and Organics Option 1) and 56.9 million pounds per year for Regulatory Option 2 (the combination of Metals Option 3, Oils Option 3, and Organics Option 1).

2. Priority and Nonconventional Pollutant Reductions

a. *Methodology.* Today's proposal, if promulgated, will also reduce discharges of priority and non-conventional pollutants. Applying the same methodology used to estimate conventional pollutant reductions attributable to application of BPT/BCT control technology, EPA has also estimated priority and non-conventional pollutant reductions for each facility by subcategory. Because EPA has proposed BAT limitations equivalent to BPT, there are obviously no further pollutant reductions associated with BAT limitations.

Current loadings were estimated by using data collected by the Agency in the field sampling program and from the questionnaire data supplied by the industry. For many facilities, data were not available for all pollutants of concern or without the addition of other non-CWT wastewater. Therefore, methodologies were developed to estimate current performance for each subcategory assessing performance of on-site treatment technologies, by using wastewater permit information and monitoring data supplied in the 1991 Waste Treatment Industry Questionnaire and the Detailed Monitoring Questionnaire as described in Section V.B.

b. *Direct Facility Discharges (BPT/BAT)* The estimated reductions in pollutants directly discharged in treated final effluent resulting from implementation of BPT/BAT are listed in Table VI.B–1. Pollutant reductions are presented for Regulatory Option 1 (the combination of Metals Option 3, Oils Option 2, and Organics Option 1) and Regulatory Option 2 (the combination of Metals Option 3, Oils Option 3, and Organics Option 1). The Agency estimates that proposed BPT/BAT regulations will reduce direct facility discharges of priority, and nonconventional pollutants by 5.0 million pounds per year for Regulatory Option 1 and 8.0 million pounds per year for Regulatory Option 2.

TABLE VI.B–1.—REDUCTION IN DIRECT DISCHARGE OF PRIORITY AND NONCONVENTIONAL POLLUTANTS AFTER IMPLEMENTATION OF BPT/BAT REGULATIONS

[Units=lbs/year]

Subcategory	Metal compounds	Organic compounds
Metals Treatment and Recovery	871,832	245,525
Oils Treatment and Recovery—Regulatory Option 1	294,543	556,627
Oils Treatment and Recovery—Regulatory Option 2	319,847	610,937
Organics Treatment	3,065,679	[1]0
Regulatory Option 1	4,232,054	802,153
Regulatory Option 2	7,617,580	1,413,091

[1] The organic compounds pollutant reduction for the Organics Subcategory was estimated to be 0, because all facilities had the treatment-in-place for removal of organic compounds.

c. *PSES Effluent Discharges to POTWs.* The estimated reductions in pollutants indirectly discharged to POTWs resulting from implementation of PSES are listed in Table VI.B–2. Pollutant reductions are presented for Regulatory Option 1 (the combination of Metals Option 3, Oils Option 2, and Organics Option 1) and Regulatory Option 2 (the combination of Metals Option 3, Oils Option 3, and Organics Option 1). The Agency estimates that proposed PSES regulations will reduce indirect facility discharge to POTWs by 6.5 million pounds per year for Regulatory Option 1 and 12 million pounds per year for Regulatory Option 2.

TABLE VI.B–2.—REDUCTION IN INDIRECT DISCHARGE OF PRIORITY AND NONCONVENTIONAL POLLUTANTS AFTER IMPLEMENTATION OF PSES REGULATIONS

[Units=lbs/year]

Subcategory	Metal compounds	Organic compounds
Metals Treatment and Recovery	428,040	120,545
Oils Treatment and Recovery—Regulatory Option 1	709,834	1,341,439
Oils Treatment and Recovery—Regulatory Option 2	771,668	1,474,708
Organics Treatment	415,812	3,521,560
Regulatory Option 1	1,553,686	4,983,544
Regulatory Option 2	2,741,166	9,979,812

C. Economic Impact Assessment

1. Introduction

EPA's economic impact assessment is set forth in a report titled ''Economic Impact Analysis of Proposed Effluent Limitations Guidelines and Standards for the Centralized Waste Treatment Industry'' (hereinafter ''EIA''). This report estimates the economic and financial effects of compliance with the proposed regulation in terms of facility and company profitability and assesses the economic effect of compliance on six regional markets. Community impacts and the effects on local communities and new centralized waste treatment (CWT) facilities are also presented. The EIA also includes a Regulatory Flexibility Analysis detailing the effects on small businesses for this industry.

As discussed previously, a total of 85 Centralized Waste Treatment facilities owned and operated by 57 companies are potentially subject to the proposed regulation. EPA has projected that 72 of these facilities will incur costs as a result of this regulation. The economic impact on each of the 72 direct and indirect dischargers was calculated based on the cost of compliance with the required effluent discharge levels for the appropriate subcategory. Impacts on direct dischargers were calculated for compliance with the proposed BPT/BCT/BAT; impacts on indirect dischargers were calculated for compliance with PSES.

Because two options are being proposed for the Oils Subcategory, EPA calculated the cost of compliance with each option. Regulatory Option 1 (the combination of Metals Option 3, Oils Option 2, and Organics Option 1) is estimated to have a total annualized cost of $49.1 million, and Regulatory Option 2 (the combination of Metals Option 3, Oils Option 3, and Organics Option 1) is estimated to have a total annualized cost of $76.8 million. In Table VI.C–1, the total annualized costs for BPT/BCT/BAT and PSES are presented in 1993 dollars.

TABLE VI.C–1.— TOTAL ANNUALIZED COSTS (10^6 $1993)

Option	BPT/BCT/BAT	PSES	Total
Option 1	14.2	34.9	49.1
Option 2	21.8	55.0	76.8

EPA also conducted an analysis of the cost-effectiveness of the alternative treatment technology options considered by the Agency. The results of this cost-effectiveness analysis are expressed in terms of the incremental costs per pound of toxic-equivalent removed. Toxic-equivalents weights are used to account for the differences in toxicity among the pollutants removed. The number of pounds of a pollutant removed by each option is multiplied by a toxic weighting factor. The toxic weighting factor is derived using ambient water quality criteria and toxicity values. The toxic weighting factors are standardized by relating them to copper. Cost-effectiveness is calculated as the ratio of incremental annualized costs of an option to the incremental pounds-equivalent removed by that option. The report, ''Cost-Effectiveness of Proposed Effluent Limitations Guidelines and Standards for the Centralized Waste Treatment Industry'' (hereinafter, ''Cost-Effectiveness Report''), is included in the record of this rulemaking.

The Agency recognizes that its data base, which represents conditions in 1989, may not precisely reflect current conditions in the industry today. EPA recognizes that the questionnaire data were obtained several years ago and thus may not precisely mirror present conditions at every facilities. Nevertheless, EPA concluded that the data provide a sound and reasonable basis for assessing the overall ability of the industry to achieve compliance with the regulations. The purpose of the impact analysis is to characterize the impact of the proposed regulation for the industry as a whole and for major groupings within the industry.

2. Baseline Industry Analysis

Of the 85 Centralized Waste Treatment facilities, 53 facilities are strictly commercial, accepting waste generated by other for treatment and management for a fee. Fourteen facilities are non-commercial, ''captive'' facilities that accept waste from off-site for treatment exclusively from facilities under the same ownership. The remaining 16 are mixed commercial/non-commercial facilities. They manage their own company's wastes and accept some waste from other sources for a fee. For the purposes of this analysis, 15 mixed commercial/non-commercial facilities have been included with the commercial facilities because a majority of their operations are commercial. The one remaining mixed commercial/non-commercial facility has been included with the non-commercial facilities because most of the operations are non-commercial.

The companies that own CWT facilities range from large, multi-facility manufacturing companies to small companies that own only a single facility (see Table VI.C–2). Of these 57 companies, 13 are small businesses (i.e., companies with less than $6 million in annual revenues). For the commercial facilities, the ability of companies to continue to support unprofitable operations will depend on company size, as well as baseline financial status.

The baseline economic analysis (presented in Table VI.C–2) evaluated each facility's financial operating condition prior to incurring compliance costs for this regulation. In 1989, about 20 percent of the commercial CWT facilities were unprofitable. Several others were only marginally profitable. The industry had expanded capacity during the 1980s, but since the late 1980s, there has been a reduction in demand for these services perhaps due to pollution prevention efforts by industrial waste generators. EPA staff learned in conversations with personnel at a number of these facilities that, while some of these facilities were now profitable, most of the remaining unprofitable facilities were still in operation three years after the questionnaire. The continued operation of such a large share of unprofitable facilities in the industry raises a significant issue. It suggests that the traditional tools of economic analysis used to project potential closures in an industry due to the costs of compliance may not accurately predict real world behavior in a market where owners have historically demonstrated a willingness to continue operating unprofitable facilities.

TABLE VI.C–2.—BASELINE CONDITIONS IN THE CWT INDUSTRY

Discharge status	Number of CWT Facilities by Commercial and Discharge Status Commercial			
	Profit >0	Profit <0	Non-commercial	Total
Direct	5	2	9	16
Indirect	35	15	6	56
Zero	8	5	0	13
Total	48	22	15	85

COMPANIES OWNING CWT FACILITIES

	Number of companies	Number of facilities
Small Companies (sales < $6 million)	13	13
All Other Companies (sales > $6 million)	44	72

LIKELIHOOD OF COMPANY BANKRUPTCY [a]

	Small companies	All other companies	Total
Likely	1	5	6
Indeterminate	3	13	16
Unlikely	8	18	26
	12	36	48

Several reasons may explain why unprofitable facilities remain in operation rather than being closed by their owners. First, most facilities are regulated under RCRA. Closure of a RCRA facility requires that the site undergo RCRA clean-up procedure prior to closure, which would entail expensive long-term monitoring and possibly clean-up of the site. According to information received from facilities, owners may find it less costly to keep unprofitable facilities in operation rather than incurring the costs of RCRA closure. Second, many facilities stay in business hoping that new environmental regulation, such as the upcoming RCRA Phase 3 rule, may

create more business for facilities. Finally, some facilities perform a service for the rest of their company, such as generating a metal-rich sludge which may be incorporated into the parent companies smelting processes.

For these reasons and because of the captive nature of many facilities, company-level impacts are a more appropriate indicator of economic achievability, as they measure the decision making process of companies and the resources available to achieve compliance. Facility-level changes in revenues where applicable and costs are computed as inputs to the company level analysis.

3. Economic Impact Methodology

Standard economic and financial analysis methods are used to assess the economic effects of the proposed regulation. These methods incorporate an integrated view of Centralized Waste Treatment facilities, the companies that own these facilities, the markets the facilities serve, and the communities where they are located.

Faced with increased costs of the proposed regulation, owners of CWT facilities have three choices: (1) Comply with the guidelines and incur the costs, (2) if a facility has operations in more than one subcategory, close the most affected operation, or (3) close the facility. Conventional economic reasoning argues that companies will make their decision based on an assessment of the benefits and costs of the facility to the company.

For commercial CWT facilities, the cost and benefits are readily observable—benefits to the company are the total revenues received; costs to the company include the payments made to the factors of production (labor, materials, etc.) plus the opportunity costs of self-owned resources (e.g., the land and capital equipment). As previously discussed, the cost associated with closure of a RCRA facility have caused facilities to remain open even when experiencing economic and financial difficulties.

For captive facilities, there is no quantifiable measure of benefits to the company of having the capacity to manage the wastes in a facility owned by the company because there is no easily defined relationship between the wastes and the products that generate the wastes. Clearly, however, companies do weigh the benefits and costs of operating a CWT facility, and the benefits in this case may include lower expected future liability costs, more control over the costs and scheduling of treatment, and certainty that treatment capacity exists for their wastes.

According to conversations with captive facilities, most are in business solely for the purpose of lower liability costs associated with the self-management of hazardous wastes.

Changes in the costs of treatment in CWT facilities may be expected to result in an increase in the price of services, which will feed back to the revenue side of commercial facilities. Overall, as long as generators have alternatives to commercial treatment (e.g., on site treatment, pollution prevention) the quantity of services traded may be expected to fall as a result of the guidelines and standards. But for some services, such as cyanide treatment or treatment of concentrated metals sludges, there are no other alternatives to commercial treatment.

Changes in the economic conditions in the CWT industry may impact the viability of the companies that own CWTs. Specifically, some companies that are already marginal or that operate a single unprofitable facility may go out of business either by simply liquidating their assets, or by declaring bankruptcy.

Finally, the communities where the CWT facilities are located may be impacted. Obviously, if facilities cut back operations, employment and income may fall sending ripple effects throughout the local community. On the other hand, there may be increased employment associated with operating the pollution controls associated with the regulation resulting in increased community employment and income. At the same time, for the communities in which CWTs are located, water quality may be expected to improve.

4. Application of the Market Analysis

For the market analysis, EPA characterized each facility individually based on the quantity of each type of waste treatment service they provide, their revenues and costs, employment, market share for each type of service provided, ownership, releases, and location in terms of the community where they are located and the regional market they serve. Six regional markets are defined.

Costs of CWT facilities include both those that vary with the quantity of CWT services provided (variable costs) and those whose value is fixed. Per-gallon variable costs are assumed constant to the capacity output rate. Revenues from CWT operations are estimated by multiplying the market price of the CWT service by the quantity of waste treated in the CWT service. Most CWT facilities also have revenues from other sources, which are treated as exogenous.

The demand for CWT services is characterized based on the responsiveness of quantity demanded to price. CWT services are intermediate goods demanded because they are inputs to production of other goods and services. The sensitivity of quantity demanded to price for an intermediate good depends on the demand characteristics (elasticity) of the good or service it is used to produce, the share of manufacturing costs represented by CWT costs, and the availability of substitutes for CWT services. The elasticity of demand for manufactured products varies widely. CWT services costs as a share of manufacturing costs is generally quite small. Substitutes for CWT services include other types of off-site waste management such as underground injection, on-site treatment, or pollution prevention. Overall, the change in quantity demanded for CWT services is assumed to be approximately proportional to any price change (e.g., a one percent increase in the price of a CWT service is expected to reduce the quantity demanded for the service by about one percent).

The markets for CWT services are regional. This market characterization is based on responses to the questionnaire and is consistent with the theory of economic geography. Within each market, there are a relatively small number of suppliers and a relatively large number of demanders. Thus the market structure is treated as being imperfectly competitive. This implies that the competition each facility faces is limited to facilities in its region so that all suppliers have a degree of market power.

This characterization of facilities, companies and markets is incorporated in a model that takes the engineering estimates of the costs of compliance with the effluent limitations guidelines and standards and projects impacts on facilities, companies, markets and communities. Each CWT faced with higher costs of providing CWT services may find it economical to reduce the quantity of waste it treats. This decision is simultaneously modeled for all facilities within a regional market, to develop consistent estimates of the facility and market impacts. Changes in the quantity of CWT services offered result in changes in the inputs used to produce these services (most importantly, labor).

For commercial facilities, the EIA thus projects changes in employment at CWT facilities. Changes in facility revenues and costs result in changes in the revenues and costs of the companies owning the facilities, and thus changes

in company profits. Increased borrowing and changes in the assets owned by the companies, together with changes in profits, result in changes in overall company financial health. The EIA projects changes in the likelihood of company bankruptcy as a result of the effluent limitations guidelines and standards. These effects are separately calculated for small businesses. Changes in employment are specified by location to determine the community impacts.

For non-commercial facilities, financial viability was determined on a company level. This is because the non-commercial facilities are generally cost centers for their companies. They do not explicitly receive revenues for their services. They exist to perform a service for the rest of the company and are not expected to be ''profitable'' as a unit. These facilities are included in the market analysis because prices charged for their commercial operations may change. Companies with some commercial operations will raise prices to cover the variable costs of the treatment and help pay for some of their fixed costs (e.g. underwrite the company waste treatment costs). Thus, no change in the quantity of CWT wastes treated are projected for non-commercial aspect of these facilities nor are market effects analyzed for the products of the parent company, since the share of waste treatment costs in the marketed products are minimal.

5. Results of the Economic Impact Analysis

Results may be reported at the facility, company, market, or community level. All facilities are either direct or indirect dischargers. Most companies own either facilities that are direct dischargers or indirect dischargers, although two companies own both direct and indirect discharging facilities. Market level impacts are the combined result of both types of dischargers simultaneously complying with the regulation. Because markets for CWT services combine facilities that are direct dischargers and facilities that are indirect dischargers, it is not possible to break the market-level impacts into impacts of BPT/BCT/BAT as distinguished from impacts of PSES. Community-level impacts are also reported based on the combined impacts of BPT/BCT/BAT and PSES. Company-level impacts are reported separately for BPT/BCT/BAT and PSES.

The impacts of complying with BAT controls under Regulatory Options 1 and 2 for the 57 companies operating CWT facilities are shown in Table VI.C–3 (for companies owning facilities that discharge directly) and Table VI.C–4 (for companies owning facilities that discharge indirectly).

TABLE VI.C—3.—IMPACTS OF THE BPT/BCT/BAT REGULATORY OPTIONS [a]

Company impacts of compliance with BPT/BCT/BAT regulatory options	Likelihood of bankruptcy					
	Option 1			Option 2		
	Small companies	Others	Total	Small companies	Others	Total
Likely	0	1	1	0	1	1
Indeterminate	0	2	2	0	2	2
Unlikely	0	11	11	0	11	11

[a] Two companies own both direct and indirect dischargers. Company-level impacts combine the effects of complying with BPT/BCT/BAT and PSES controls. These two companies appear in both tables.

TABLE VI.C–4.—IMPACTS OF THE PSES REGULATORY OPTIONS [a]

Company impacts of compliance with the PSES regulatory options	Likelihood of bankruptcy					
	Option 1			Option 2		
	Small companies	Others	Total	Small companies	Others	Total
Likely	4	5	9	2	6	8
Indeterminate	2	10	12	0	10	10
Unlikely	5	13	18	9	12	27

[a] Two companies own both direct and indirect dischargers. Company-level impacts combine the effects of complying with BPT/BCT/BAT and PSES controls. These two companies appear in both tables.

6. Market Impacts of EPA Regulatory Options

The markets for CWT services are regional. Within each region, markets for overall types of treatment such as metal recovery or metal treatment may be further subdivided into smaller markets on the basis of the per-gallon cost of treatment. The price changes and quantity changes projected at the regional and service level with each option are combined into an overall national value for the CWT services. In all cases, EPA's assessment projects that the prices of these services will increase and utilization of service will fall. Thus, EPA would expect, if the limitations and standards are promulgated as proposed, a reduction in the absolute quantity of wastes commercially treated in addition, of course, to the improvement in treatment. These market-level adjustments in the quantity of wastes that are treated are reflected in the reduction in the quantity of services provided by individual commercial CWTs. In some cases, with less waste being managed by these facilities, it is possible that some commercial facilities could close. If demanders of waste management services are assumed to have fewer substitutes for CWT services than assumed here, then prices would increase more than projected here, quantities would fall less and the facility and company level impacts (discussed below) would be smaller.

Under Option 1, price increases range from 3 to 35 percent, while quantities of waste treated decrease by between 3 percent and 20 percent. Under Option 2, price increases range from 3 to 42 percent, while quantity decreases range from 3 percent to 65 percent. The larger price increases occur in the Oils

Recovery and Oils Treatment Markets. These higher price increases occur because of the poor treatment operations currently in place (only one facility in the Oils Recovery treats the wastewater generated from the oil recovery process). Price increases may occur in this market because the present market has inadequate treatment for the wastes generated.

Significant price increases have potential effects on the users of CWT services. In order to account for impacts on the users of CWT services, EPA estimated the consumer surplus share of dead weight loss of the proposed regulation to be $6.8 million 1993 dollars for Regulatory Option 1 (the combination of Metals Option 3, Oils Option 2, and Organics Option 1) and $13.4 million 1993 dollars for Regulatory Option 2 (the combination of Metals Option 3, Oils Option 3, and Organics Option 1). These costs are not additive to the direct implementation costs of the proposed regulation due to differences in the technique for calculating the consumer surplus costs. But the costs indicate the burden is not excessive in the context of the rule.

7. Impacts of BPT/BCT/BAT

Complying with the BPT/BCT/BAT effluent limitations guidelines and standards will increase the cost of treating CWT wastes at affected direct dischargers. This in turn will reduce the number of facilities providing CWT services, resulting in an increase in the market price of the treatment services and a decrease in use of CWT services. EPA projects that changes in the prices of CWT services, combined with facility-specific changes in the costs of treatment and the quantities of waste treated, will result in changes in facility costs and revenues from services sold. These changes result in changes in the revenues and costs of companies owning CWT facilities. In addition, changes in the liabilities and assets of companies owning CWT facilities result from the borrowing and purchasing of capital equipment associated with complying with the regulation. Thus, overall company viability may change as a result of complying with the effluent limitations guidelines and standards. The Agency conducted an analysis using a multi-discriminant function called the Z-score, which combines several financial ratios, to estimate changes in the likelihood of company bankruptcy that result from compliance with the guidelines and standards. As shown in Table VI.C–3, one company owning a direct discharger is predicted to be likely to become bankrupt under both Regulatory Options 1 and 2. However, this company was also predicted to be bankrupt at baseline (see Table VI.C–2), so the Regulatory Options for BPT/BCT/BAT do not have an incremental adverse effect on the viability of companies owning direct dischargers.

8. Impacts of PSES

Complying with the PSES standards will increase the cost of treating CWT wastes at affected indirect dischargers. This in turn will reduce the supply of CWT services, resulting in an increase in the market price and a decrease in use of CWT services. Changes in the prices of CWT services, combined with facility-specific changes in the costs of treatment and the quantities of waste treated, result in changes in facility costs and revenues from services sold. These changes result in changes in the revenues and costs of companies owning CWT facilities. In addition, changes in the liabilities and assets of companies owning CWT facilities result from the borrowing and purchases of capital equipment associated with complying with the regulation. Thus, overall company viability may change as a result of complying with the effluent limitations guidelines and standards. As with BPT/BCT/BAT, the Agency used the Z-score to estimate changes in the likelihood of company bankruptcy that result from compliance with the guidelines and standards. As shown in Table VI.C–4, EPA projects that nine companies owning indirect dischargers will likely become bankrupt under Regulatory Option 1, and eight companies owning indirect dischargers are likely to become bankrupt under Regulatory Option 2. At baseline, EPA analysis shows that five companies owning indirect dischargers are bankrupt. Thus, the PSES controls are predicted to result in only an incremental impact on company viability.

With the PSES controls under Regulatory Option 1, four additional companies owning indirect dischargers are predicted to become bankrupt. Under Regulatory Option 2, three additional companies owning indirect dischargers are predicted to become bankrupt. Although the costs are higher in general under Regulatory Option 2, the data show that the companies owning indirect dischargers that incur these higher costs are better able to withstand the impacts.

To the extent that predicted bankruptcies result in closure of CWT facilities, the cost of such closure are attributable to this action. EPA has not calculated the cost of closure for the treatment operations although for RCRA-permitted facilities, under some circumstances, such costs may be significant. The EPA solicits comment on the probability for closure of such facilities impacted by the proposed regulation and the costs associated with closure of the treatment operations.

9. Community Impacts of the Regulatory Options

Overall, the communities in which CWT facilities are located are expected to experience fairly small, and generally positive, increases in employment as a result of the Regulatory Options. In addition to the negative employment changes estimated for facilities becoming unprofitable under Options 1 and 2, employment increases may occur in some facilities due to the operational changes related to the new regulations or due to the increase in volume of waste treated. These changes in employment may be positive for CWT facilities made better off by the regulation (for example, those who sell more services), or they may be negative for facilities becoming less profitable but not moving from profitable to unprofitable. Nationwide, facilities becoming unprofitable reduce their employment by 44 employees under Regulatory Option 1 and by 52 employees under Regulatory Option 2. Combined with market-related increases and decreases in employment at other facilities, the total market-related reduction in employment under Regulatory Option 1 is estimated to be 378 employees. Under Regulatory Option 2, the national market-related reduction employees is estimated to be 501 employees.

These decreases in employment result from market adjustments to the proposed regulations must be compared to the employment increases estimated to be required for operation and maintenance of the controls. A large percentage of the costs estimated for facilities is attributed to the high annual operating and maintenance costs. The Agency estimates that the proper handling and treatment of the concentrated wastes will require additional personnel and tanks to segregate and monitor the wastes being treated. Therefore, under Regulatory Option 1, the labor requirements of the controls are estimated to be 710 employees. Under Regulatory Option 2, the labor requirements are estimated to be 735 employees. Overall, employment is projected to increase by 333 employees under Regulatory Option 1 and by 234 employees under Regulatory Option 2. Thus, we expect community-level impacts to be small and generally positive.

10. Foreign Trade Impacts

The EIA does not project any foreign trade impacts as a result of the effluent limitations guidelines and standards. Although most of the affected CWT facilities treat waste that is considered hazardous under RCRA, international trade in CWT services for treatment of hazardous wastes is virtually nonexistent.

11. Regulatory Flexibility Analysis

The Agency performed an initial regulatory flexibility analysis to assess the relative severity of impacts on small entities, specifically small companies, owning CWT facilities. Small companies are defined as those having sales less than $6 million, which is the Small Business Administration definition of a small business for SIC code 4953, Refuse Systems. This is the SIC code that most CWTs listed in their questionnaire responses. Thirteen of the 84 facilities not owned by the Federal Government are small companies according to this definition. One facility is owned by the Federal Government. To determine whether the impacts on small companies are ''significant,'' EPA used the following criteria:

(1) Annual compliance costs increase total costs of production for small entities for the relevant process or product by more than 5 percent.

(2) Compliance costs as a percentage of sales for small entities are at least 10 percent higher than compliance costs as a percentage of sales for large entities.

(3) The requirements of the regulation are likely to result in closures of small entities.

Six of the thirteen small companies are estimated to have compliance costs exceeding 5 percent of baseline CWT costs. Larger companies, however, have both a higher absolute number and a higher percentage of companies incurring compliance costs that exceed 5 percent of baseline CWT costs. Thus, small businesses are affected less than other facilities.

The median value for the ratio of compliance costs to sales for small companies is very small: 0.6 percent. However, the median value for larger companies is even smaller: less than 0.001 percent. Thus, the ratio for small companies is more than 10 percent higher than the ratio for larger companies. While this suggests that small companies are more affected in comparison to the larger companies, the overall level of impact is very low for all size categories.

The analysis does not estimate facility closures, but it does assess the impact of the Regulatory Options on the likelihood of company bankruptcy. As shown in Tables VI.C–3 and VI.C–4, three of four additional companies predicted to become ''likely'' to incur bankruptcy under Regulatory Option 1 are small. Of the three additional companies becoming likely to incur bankruptcy as a result of Option 2, one is small. Thus, under Regulatory Option 1, small businesses incur relatively larger impacts according to this measure, but under Regulatory Option 2, small businesses do not incur relatively larger impacts.

Overall, while companies in all size categories are affected, small companies may experience impacts that are somewhat greater relative to those incurred by larger companies.

The Agency considered less stringent control options for each subcategory. However, given the concentrated and difficult-to-treat wastes handled at CWT facilities, the Agency does not believe a less stringent level of control is BPT/BCT/BAT. From discussions with permit writers for CWT facilities, under the present treatment standards, many instances of water contamination and odor releases occur because of Centralized Waste Treatment facilities as well as contamination of sludge at POTWs. In comparison to other promulgated effluent guidelines, this industry has some of the most concentrated and toxic waste streams. Therefore, a stringent level of control is deemed necessary.

12. Cost-Effectiveness Analysis

For each of the Regulatory Options, cost-effectiveness is calculated as the ratio of the incremental annual costs in 1981 dollars to the incremental pounds-equivalent of pollutants removed. The estimated pounds-equivalent removed were calculated by weighting the number of pounds of each pollutant by the relative toxic weighting factor for each pollutant. The use of pounds-equivalent gives correspondingly more weight to more highly toxic pollutants. Thus, for a given expenditure and pounds of pollutants removed, the cost per pound-equivalent removed would be lower when more highly toxic pollutants are removed than when less toxic pollutants are removed. The analysis employed toxic weighting factors for weighting different pollutants according to their relative toxicity.[5] Table VI.C–5 and Table VI.C–6 show the Total Cost-Effectiveness for each subcategory option for BPT/BAT and PSES, respectively.

TABLE VI.C–5.—BPT/BAT COST EFFECTIVENESS ANALYSIS

Option	Total costs ($1981)	Total removals (lb. eq.)	Cost-effectiveness ($/lb. eq.)	Incremental cost-effectiveness ($/lb. eq.)
Metals Subcategory				
1	2,278,827	1,085,922	5.54	
2	8,541,863	1,142,279	51.52	111.13
3	8,840,764	1,148,324	61.79	49.45
Oils Subcategory				
1	0	0	0	.....
2	628,228	113,500	5.54	5.54
3[a]	6,143,622	119,256	51.52	958.19

[5] Further, EPA's toxic weighting factors do not provide environmental ''credit'' for removal of certain regulated pollutants. Thus, for example, the toxic weighting factors do not account for removals of the conventional pollutant, oil and grease. Consequently, a comparison of the difference in cost-effectiveness associated with oil subcategory Regulatory Options 1 and 2 does not account for the significantly greater removals of oil and grease achieved through Regulatory Option 2 treatment technology.

TABLE VI.C–5.—BPT/BAT COST EFFECTIVENESS ANALYSIS—CONTINUED

Option	Total costs ($1981)	Total removals (lb. eq.)	Cost-effectiveness ($/lb. eq.)	Incremental cost-effectiveness ($/lb. eq.)
4	7,262,456	117,540	61.79	−652.04
Organics Subcategory				
1	293,131	843,908	0.35	
2	2,280,094	25,585	89.12	−2.43

[a] Due to the use of pounds equivalent for the Cost-Effectiveness Analysis, the pollutant removals do not include the incremental Oil & Grease removal of 1,308,503 lb/year for Oils Option 3. The incremental cost associated with the removal of Oil and Grease ($0.39/pound removed) is commensurate with other effluent limitations guidelines and standards, such as the $9.77/pound of TSS and Oils and Grease promulgated for the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (EPA 821–R–93–003).

TABLE VI.C–6.—PSES COST EFFECTIVENESS ANALYSIS

Option	Total costs ($1981)	Total removals (lb.eq.)	Cost effectiveness ($/lb.eq.)	Incremental cost effectiveness ($/lb.eq.)
Metals Subcategory				
1	2,410,819	156,945	15.36	.....
2	17,790,208	164,492	108.15	2,037.92
3	18,676,537	165,056	113.15	1,569.66
Oils Subcategory				
1	0	0	.....	.....
2	2,021,483	146,606	13.79	13.79
3[b]	16,570,113	148,780	111.37	6,692.49
4	19,864,864	148,264	133.98	−6,376.47
Organics Subcategory				
1	1,837,897	47,409	38.77	.....
2	3,722,098	41,227	90.28	−304.83

D. Water Quality Analyses

The water quality benefits of controlling discharges from CWTs to surface waters and POTWs were evaluated in national analyses of direct and indirect dischargers. CWT effluents contain priority, nonconventional, and conventional pollutants. Discharge of these pollutants into freshwater and estuarine ecosystems may alter aquatic habitats, affect aquatic life, and adversely impact human health. Many of these pollutants are either human carcinogens, human systemic toxicants, or aquatic life toxicants. In addition, many of these pollutants are persistent and bioaccumulate in aquatic organisms. These pollutants can also affect POTW operations and cause POTW sludge contamination. Four direct CWT wastewater dischargers and eight POTWs receiving wastewater from 13 indirect CWT dischargers are currently impairing receiving stream water quality (i.e., are listed on EPA's 304(l) short list of impaired water bodies). In addition, seven cases of impairment of POTW operations have also been documented. (All 66 pollutants proposed for regulation have at least one toxic effect (human health carcinogen and/or systemic toxicant or aquatic toxicant)).

Discharge of conventional pollutants such as TSS, Oil & Grease, and BOD^5 can have adverse effects on human health and environment. For example, habitat degradation can result from increased suspended particulate matter that reduces light penetration and, thus, primary productivity, or from accumulation of sludge particles that alters benthic spawning grounds and feeding habitats. Oil & Grease can have lethal effect on fish, by coating surface of gills causing asphyxia, or depleting oxygen levels due to excessive biological oxygen demand, or by reducing stream reaeration because of surface film. Oil and grease can also have detrimental effects on waterfowl by destroying the buoyancy and insulation of their feathers. Bioaccumulation of oil substances can cause human health problems including tainting of fish and bioaccumulation of carcinogenic polycyclic aromatic compounds. High BOD^5 levels can also deplete of oxygen levels resulting in mortality or other adverse effects on fish. But the effects of conventional pollutants and pollutant parameters, such as TOC and COD, are not calculated when modelling the effect of the proposed regulation on the water quality of receiving streams and POTW operations. The Agency solicits comment on possible approaches for calculating the effect of conventional pollutants and pollutant parameters, such as TOC and COD, on the water quality of receiving streams and POTW operations in terms of inhibition or sludge contamination.

The effects of direct wastewater dischargers of toxic pollutants (excluding conventional pollutants and pollutant parameters) on receiving stream water quality are evaluated at current and proposed BPT/BAT treatment levels for today's proposed rule. The potential impacts of indirect wastewater dischargers on POTWs in terms of inhibition of POTW operation, contamination of sludge and the effects of POTWs effluents on receiving stream water quality are also evaluated at current discharge levels and proposed PSES levels. Water quality models are used to project pollutant in-stream concentrations based on estimated releases at current and proposed treatment levels; the in-stream concentrations are then compared to EPA-published water quality criteria or to documented toxic effect levels where EPA water quality criteria are not available for certain pollutants. POTW models are used to estimate potential POTW inhibition and sludge contamination.

The effects on receiving stream water quality for 15 direct and 45 indirect CWT facilities discharging up to 113 pollutants to 15 receiving streams and 33 POTWs respectively, are evaluated. These analyses are first performed on subcategory-specific basis for the three CWT subcategories (i.e., metals, oils, and organics subcategories). The subcategory-specific analyses, however, consider only impacts of discharges from individual subcategories, and therefore, underestimate overall water quality impacts for facilities with multiple subcategory operations. Over 40% of facilities in the Centralized Waste Treatment Industry have operations in multiple subcategories. In order to evaluate overall benefits of the proposed BPT/BAT/PSES proposed options for pollutants (excluding conventional pollutants and pollutant parameters), the water quality and POTW analyses are also performed for multiple subcategory combinations, as appropriate for individual facilities.

The subcategory-specific modeling results for pollutants (excluding conventional and pollutant parameters) show that the proposed BPT/BAT/PSES limitations reduce current excursions of chronic aquatic life and/or human health criteria or toxic effect levels as follows: (1) for the Metals Subcategory from 19 receiving streams to four streams; (2) for the Oils Subcategory from seven receiving streams to one stream for both co-proposed options; and (3) for the Organics Subcategory from 14 receiving streams to five streams. For the multiple subcategory combinations (as applicable to individual facilities), the modeling shows current excursions of chronic aquatic life and/or human health criteria or toxic effect levels projected for 30 receiving streams reduced to ten receiving streams for both co-proposed regulatory options.

The potential impacts of 45 indirect dischargers, which discharge up to 113 pollutants (excluding conventional pollutant and pollutant parameters) into 33 POTWs are also evaluated in terms of inhibition of POTW operations and contamination of sludge. Both, the subcategory-specific analyses for these three CWT subcategories (i.e., metals, oils, and organics subcategories), and for the multiple subcategory combinations, as appropriate for individual facilities, are performed. The subcategory-specific modeling results show the proposed PSES reduce and/or eliminate current potential POTW inhibition and sludge contamination problems as follows: (1) in the Metals Subcategory from 9 POTWs with potential inhibition problems to two POTWs, and from 11 POTWs with potential sludge contamination problems to one POTW; and (2) in the Oils Subcategory from ten POTWs with potential inhibition problems to three POTWs and from one POTW with potential sludge contamination problem to none for both co-proposed options. No potential POTW inhibition or sludge contamination problems are projected for the Organics Subcategory at any level. For the multiple subcategory combinations, the modeling shows the proposed PSES to reduce current POTW inhibition problems projected for 17 POTWs to six POTWs, and potential current sludge contamination problems projected for 13 POTWs to one POTW.

The POTW inhibition and sludge values used in this analysis are not, in general, regulatory values. They are based upon engineering and health estimates contained in guidance or guidelines published by EPA and other sources. Thus, EPA generally is not basing its regulatory approach for proposed pretreatment discharge levels upon the finding that some pollutants interfere with POTWs by impairing their treatment effectiveness or causing them to violate applicable limits for their chosen disposal methods. (Rather, the proposed discharge limits are based upon a determination of pass through as explained earlier in preamble). However, the values used in this analysis help indicate the potential benefits for POTW operations and sludge disposal that may result from the compliance with proposed pretreatment discharge levels.

E. Non-Water Quality Environmental Impacts

The elimination or reduction of one form of pollution may create or aggravate other environmental problems. Therefore, Sections 304(b) and 306 of the Act call for EPA to consider non- water quality environmental impacts of effluent limitations guidelines and standards. Accordingly, EPA has considered the effect of these regulations on air pollution, solid waste generation, and energy consumption.

1. Air Pollution

CWT facilities generate wastewater that contain significant concentrations of organic compounds, some of which are also on the list of Hazardous Air Pollutants (HAP) in title 3 of the Clean Air Act Amendments (CAAA) of 1990. These wastewater typically pass-through a series of collection and treatment units that are open to the atmosphere and allow wastewater containing organic compounds to contact ambient air. Atmospheric exposure of the organic-containing wastewater may result in significant volatilization of both volatile organic compounds (VOC), which contribute to the formation of ambient ozone, and HAP from the wastewater.

VOC and HAP are emitted from wastewater beginning at the point where the wastewater first contacts ambient air. Thus, VOC and HAP from wastewater may be of concern immediately as the wastewater is discharged from the process unit. Emissions occur from wastewater collection units such as process drains, manholes, trenches, sumps, junction boxes, and from wastewater treatment units such as screens, settling basins, and equalization basins, biological aeration basins, air or steam strippers lacking air emission control devices, and any other units where the wastewater is in contact with the air.

Today's proposed regulations for the Organics Subcategory are based on the use of air stripping equipped with a carbon adsorption air emission control device for controlling volatile organic compounds. For the Metals and Oils Subcategories, where low levels of volatile organic compounds were detected, treatment technologies are equipped air scrubbers to control emissions.

No adverse air impacts are expected to occur due to the proposed regulations. Based on raw wastewater loading estimates, air emissions of volatile pollutants would decrease by 2.0 million pounds per year due to the

use of air stripping equipped with carbon adsorption air emission control devices. The proposed regulation, however, does not require air stripping equipped with carbon adsorption air emission control devices or any specific technology, but only establishes the amount of pollutant that can be discharged to navigable waters.

2. Solid Waste

Solid waste would be generated due to the following technologies, if implemented to meet proposed regulations, selective metals precipitation, ultrafiltration, reverse osmosis, carbon adsorption, and air stripping. The solid wastes generated due to the implementation of the technologies discussed above were costed for off-site disposal. These costs were included in the economic evaluation of the proposed technologies.

The filter cake from selective metals precipitation will generally contain metal-bearing waste. Even though the filter cake generated from selective metals precipitation may be recycled due to its high metal content, the EPA developed costs for disposal of the filter cake in Subtitle C and D landfills. EPA would expect that some portion of the metal-rich filter cake will be recycled. EPA estimates that 39 million pounds of filter cake will be generated annually by 56 facilities.

Reverse osmosis of oily streams results in the generation of a concentrated residual stream. The concentrate contains oily and metal-bearing wastes. The EPA estimates that 58 million gallons of reverse osmosis concentrate will be generated annually by 35 facilities.

Ultrafiltration of oily streams results in the generation of a concentrated residual stream which contain oily and organic waste. The EPA estimates that 4.1 million gallons of ultrafiltration concentrate will be generated annually by 35 facilities.

Granular activated carbon adsorption treatment of waste results in the generation of exhausted or spent activated carbon. Approximately 1.6 million pounds of activated carbon will be exhausted or spent annually by 35 facilities. The activated carbon may be regenerated on-site or off-site by vendors. The EPA costed regeneration of the spent activated carbon by off-site vendors.

Air stripping of waste streams results in the generation of contaminated off-gas, which requires the application of an air pollutant control device such as a catalytic oxidizer. When the catalytic oxidizer becomes deactivated, the spent catalyst must be replaced. Approximately 168.5 pounds annually of spent catalytic oxidizer are used.

3. Energy Requirements

EPA estimates that the attainment of BPT, BCT, BAT, NSPS, PSES, and PSNS will increase energy consumption by a small increment over present industry use. The main energy requirement in today's proposed rule is for the operation of ultrafiltration units. Ultrafiltration units operate at high pressures to separate the waste stream. The ultrafiltration unit would require 9.4 million kilowatthours per year. Energy requirements will also increase due to reverse osmosis and liquid filtration units. Reverse osmosis and liquid filtrations units would require approximately 4.1 and 4.9 million kilowatthours per year, respectively. Overall, an increase of 22.0 million kilowatthours per year would be required for the proposed regulation which equates to 40 barrels of oil per day. The United States currently consumes 19 million barrels of oil per day.

VII. Administrative Requirements

A. Docket and Public Record

The public record for this rulemaking is available for public review at EPA Headquarters, 401 M Street SW., Washington, DC 20460 in the Office of Water Docket, Room L102 (in the basement of Waterside Mall). The Docket is staffed by an EPA contractor, Labat-Anderson, Inc., and interested parties are encouraged to call for an appointment. The telephone number for the Water Docket is (202) 260–3027. The EPA information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for photocopying.

EPA notes that many documents in the record supporting these proposed rules have been claimed as confidential business information and, therefore, are not included in the record that is available to the public in the Water Docket. To support the rulemaking, EPA is presenting certain information in aggregated form or is masking facility identities to preserve confidentiality claims. Further, the Agency has withheld from disclosure some data not claimed as confidential business information because release of this information could indirectly reveal information claimed to be confidential.

B. Clean Water Act Procedural Requirements

As required by the Clean Water Act, EPA will conduct a public hearing on the pretreatment standards portion of the proposed rule. The public hearing will be conducted on March 24, 1995, from 8:30 a.m. to 10:30 a.m. in the Lake Michigan Conference Room at the U.S. EPA Region V Building, 77 West Jackson Boulevard, Chicago, IL.

C. Executive Order 12866

Under Executive Order 12866, [58 FR 51735 (October 4, 1993)] the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a ''significant regulatory action'' because it may adversely affect a sector of the economy. As such this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

EPA has concluded that costs on the economy of this proposed rule will be less than $100 million annually, and it has not prepared an RIA.

D. Executive Order 12875

In developing the proposed CWT effluent limitations guidelines and standards, EPA has already invested substantial time in discussions with permit writers, the affected industries and environmental groups. As previously noted, in March of this year, EPA held a public meeting, attended by industry, states, and local permitting authorities to discuss its efforts. The Agency also has had discussions concerning the regulation at the 1994 Pretreatment Coordinators Workshop attended by state and local permitting authorities, various industrial trade association meetings, and effluent guideline task force meetings.

On October 26, 1993, President Clinton issued Executive Order No. 12875, ''Enhancing the Intergovernmental Partnership.'' This order is intended to reduce the imposition of unfunded mandates upon State, local and tribal governments. The order requires Federal agencies like EPA that impose unfunded mandates upon such governments through regulation either (1) to assure that the Federal government provides the necessary funds for compliance or (2) to describe the extent of the Agency's prior consultations with affected units of governments and the nature of their concerns. The order calls for intergovernmental consultation to begin as early as possible in the regulatory development process, preferably before the publication of the notice of proposed rulemaking. Consultation may continue after publication but must occur prior to the formal promulgation of the regulatory action containing the proposed mandate.

The rulemaking process to develop the CWT limitations guidelines and standards antedates the issuance of E.O. 12875 by a number of years as explained above. To meet its obligations under E.O. 12875, following publication of the regulation, EPA plans extensive outreach efforts to state and local governments. EPA will develop estimates of the upfront and recurring costs likely incurred by State, local or tribal governments in complying with the proposal, if adopted.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 et. seq., requires EPA and other agencies to prepare an initial regulatory flexibility analysis for regulations that have a significant impact on a substantial number of small entities. EPA projects that today's proposed rule, if promulgated, could affect small businesses. The initial regulatory flexibility analysis for these proposed rules is incorporated into the economic impact analysis and is discussed in Section VI.A. Briefly, the small entity analysis estimates the economic impacts of the new requirements on small companies and describes the potential disparate impacts between the groups of large and Centralized Waste Treatment facilities. The analysis also presents the Agency's consideration of alternatives that might minimize the impacts on small entities.

The reasons why EPA is proposing this rule are presented in Section II. The legal basis for today's rule is presented in Legal Authority. The number of small entities and the approach for defining small entities are summarized in Section VI.A. and the economic effects on small entities detailed in the economic impact analysis report for this rulemaking. This assessment has led the Agency to conclude that small businesses are not disproportionately impacted by the proposed rule. Reporting and other compliance requirements are summarized in Sections VI. and VII. and detailed in the technical development document. While the Agency has not identified any duplicative, overlapping, or conflicting Federal rules, a discussion of other related rulemakings is presented in Section II.

F. Paperwork Reduction Act

The proposed effluent guidelines and standards contain no information collection activities and, therefore, no information collection request (ICR) has been submitted to the Office of Management and Budget (OMB) for review and approval under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

VIII. Solicitation of Data and Comments

A. Introduction and General Solicitation

EPA invites and encourages public participation in this rulemaking. The Agency asks that comments address any perceived deficiencies in the record of this proposal and that suggested revisions or corrections be supported by data.

The Agency invites all parties to coordinate their data collection activities with EPA to facilitate mutually beneficial and cost-effective data submissions. EPA is interested in participating in study plans, data collection and documentation. Please refer to the **FOR FURTHER INFORMATION** section at the beginning of this preamble for technical contacts at EPA.

B. Specific Data and Comment Solicitations

EPA has solicited comments and data on many individual topics throughout this preamble. The Agency incorporates each and every such solicitation here, and reiterates its interest in receiving data and comments on the issues addressed by those solicitations. In addition, EPA particularly requests comments and data on the following issues:

1. Applicability of Regulation for Facilities Which Mix Centralized Waste Treatment Waste Streams With Other Industrial Waste Prior to Treatment or After Minimal Treatment

The Agency is asking for comment on whether the guidelines and standards should apply to categorical facilities which receive limited quantities of CWT waste streams for treatment. The Agency considered two approaches for this proposal.

The first approach EPA considered would have limited the applicability of the guidelines and standards to facilities which treat only the defined CWT wastes without any mixing of wastes with other categorical wastes. EPA, however, has rejected this approach for the proposal because of concern that this would create a loophole. If CWT wastes could be mixed with other wastes for treatment and escape regulation as CWT wastes, there exists significant possibility that economically achievable reduction of CWT pollutant discharge levels will not be met. The Agency believes that if the guidelines and standards do not apply to CWT wastes mixed with other waste streams there is significant potential for blending waste streams to avoid otherwise required effluent reduction levels.

Under the approach EPA is proposing, CWT wastes that are mixed with other categorical waste streams or other waste streams will be subject to CWT effluent limitations and standards. Even under this second approach, however, there exists significant potential to avoid achieving CWT effluent reduction levels by mixing wastes. Therefore, in order to ensure that facilities mixing CWT wastes and non-CWT waste streams actually treat the CWT wastes, the Agency is also proposing to require separate monitoring for compliance with CWT standards or limitations waste streams (or alternatively, a demonstration that treatment of mixed CWT wastes and other waste streams achieves the required pollutant reductions). (See discussion below.) In the absence of a requirement for separate monitoring for compliance of CWT waste streams, promulgation of the CWT guideline could have the perverse result of, in fact, *discouraging* centralized treatment by encouraging categorical facilities to accept CWT waste streams that are diluted with other waste streams before treatment. The result would be no treatment for the CWT wastes and no achievement of effluent reduction obtainable at facilities treating only CWT wastes. The Agency is asking for comment on this approach.

2. Monitoring To Demonstrate Compliance With CWT Limitations and Standards

EPA is today proposing to require each CWT facility that discharges wastewater resulting from the treatment of CWT wastes to monitor to demonstrate compliance with

applicable subcategory limitations and standards.

As discussed above, commingling of disparate waste streams may, in many cases, allow achievement of discharge limits without any real reduction in the quantity of discharges of certain pollutants. In fact, EPA has data that show that CWT facilities which commingle subcategory waste do not achieve the reductions in pollutant discharges that separate treatment yields. One facility at which EPA sampled mixes oily wastewater after chemical emulsion breaking with metal-bearing wastewater. EPA measured the oily wastewater after emulsion breaking and before mixing with the other subcategory wastes and found measurable levels of regulated organic compounds. Samples of the mixed wastewater showed non-detectable levels of the organic compounds. The treatment for mixed wastewater included no treatment for organics removal. Thus, this facility clearly provides no reduction in organic pollutant discharges other than that provided by chemical emulsion breaking of the surface oil. Separate treatment of oily wastes would, however, remove significant quantities of organic pollutants. EPA has preliminarily concluded that the reduced removals that may be associated with the mixing of waste streams is inconsistent with the requirements of the Act. EPA, consequently, as previously discussed, is requiring that the CWT demonstrate to the POTW or permitting authority that it is achieving removal of regulated pollutants that are equivalent to that which would be obtained if the wastes are treated separately.

EPA's proposal today does not require separate treatment of CWT and non-CWT wastewater. Rather, EPA requires monitoring or other data establishing that the required effluent levels are met. The Agency has concluded, however, that separate treatment is economically achievable and the Agency has concluded that mixing waste will not achieve the pollutant reduction associated with best available technology. Consequently, as explained above, EPA is proposing to require monitoring for compliance at a point immediately following treatment of the CWT waste stream. In the case of facilities that mix CWT wastes with other wastes (or mix different subcategories of CWT waste streams) for treatment, EPA has proposed to require a facility to demonstrate that treatment processes employed result in reduction in the quantity of pollutants discharged that is equivalent to that achieved by separate treatment.

The Agency has concluded it has the authority to adopt such a requirement. Under the Clean Water Act, effluent limitations must ensure the achievement of the discharge levels associated with BPT/BCT/BAT technology. The data collected by the Agency establishes that today's proposed BPT/BCT/BAT limitations and standards are available at a cost not incommensurate with the expected effluent reduction and no more stringent limitations are economically achievable. Without a requirement to demonstrate compliance with the limitations and standards, EPA cannot ensure that the limitations and standards will be met.

3. Estimation of Industry Size

From the information obtained from the 1991 Waste Treatment Industry Questionnaire, EPA estimates that there are 85 facilities in the Centralized Waste Treatment Industry. Permit writers and industry representatives believe this is an underestimation of the present industry size. EPA's estimation of The industry size is based on data provided from questionnaire mailed to facilities that EPA identified using information available to it in 1989. As stated earlier, facilities names were gathered from various sources, because no SIC code exists for the industry. Therefore, there may have been CWT facilities not included on the questionnaire mailing list. EPA solicits information on the number, name, and location of facilities within the industry.

4. Exclusion of Pipeline Centralized Waste Treatment Facilities From Scope of Rule

The Agency proposes to exclude from this regulation facilities which receive all waste from off-site by pipeline from the source of waste generation.[6] Based on the information gathered in the 1991 Waste Treatment Industry Questionnaire, such facilities are fundamentally different from those that are the subject of today's proposal. These pipeline facilities receive steady flows of relatively consistent pollutant profiles from facilities that in most cases are subject to categorical regulations. By contrast, centralized waste treatment facilities receive concentrated wastes with highly variable pollutant content, such as sludges, tank bottoms, off-spec products, and process residuals. Permit writers should use the building block approach in conjunction with the appropriate guidelines for the facilities discharging to the pipeline facility to derive the appropriate BPJ effluent limitations for these facilities. The Agency solicits comment on excluding such facilities from this scope of this rule as well as comment on this approach to permitting pipeline facilities.

5. De minimis Level for Scope of Regulation

According to comments received from the May 1994 Effluent Guidelines Plan (59 FR 25859), the EPA should consider establishing a *de minimis* level for the scope of the regulations due to possible management practices at manufacturing facilities. Manufacturers may receive small quantities of waste from off-site to treat in a wastewater treatment system due to a site's ability to handle the waste properly in comparison to the site at which the waste is generated. Information collected from the 1991 Waste Treatment Industry Questionnaire was not designed to collect this information due to the method of creating the mailing list. EPA solicits additional data to determine if a *de minimis* level should be established and information on the appropriate level.

6. Characterization of Waste Received by Oils Subcategory Facilities

In the EPA sampling program for the Oils Subcategory, the EPA focused on facilities which treat concentrated, stable oil-water emulsions which are difficult to treat, because the majority of facilities identified in 1989 with on-site treatment accepted this type of waste. EPA requests information on the type of oily waste (stable, unstable, etc.) accepted for treatment by facilities in the Oils Subcategory as well as the constituents found in the waste.

7. Methodology for Estimating Current Performance

Many facilities in the Centralized Waste Treatment Industry commingle waste receipts from off-site with other on-site generated wastewater, such as non-contaminated stormwater and other industrial wastewater, prior to discharging. This mixing of waste may occur prior to or after treatment of the waste receipts. Because the commingling occurs prior to the discharge point, monitoring data collected by facilities at the discharge point cannot be used to estimate the current treatment performance of certain

[6] However, a facility which receives wastes by pipeline from a facility which receives off-site wastes by truck, barge, etc. but does not treat the wastes is still a CWT facility. The interposition of an intermediate collection agent between generators of CWT waste and a CWT treatment facility does not convert the treatment facility into a non-CWT facility.

centralized waste treatment operations. Under the approach EPA is proposing, in the case of the introduction of stormwater after treatment but before discharge, the allowable discharges from such a facility would be based on the guideline limitations and standards before the introduction of the stormwater. In the case of the stormwater or other wastes introduced *before* treatment, as discussed previously, the EPA used several methods to estimate current industry performance. EPA solicits comment on the methodologies used to estimate current discharge performance. EPA also requests discharge monitoring data from facilities prior to commingling the Centralized Waste Treatment wastewater with other sources of wastewater. These data will be used to assess current discharge performance and to statistically analyze the autocorrelation of concentrations measured on consecutive days (See Section V.G. for an explanation of autocorrelation). Before submitting discharge monitoring data, please contact Debra DiCianna at (202) 260–7141 to ensure that the data provided include information to support its use for calculating current performance and possible limitations.

8. Implementation of Regulation for Multiple Subcategory Facilities

Forty percent of the facilities in the Centralized Waste Treatment Industry receive flows that fall within two or more of the proposed subcategories for this industry. Since waste receipts in this industry are concentrated and difficult to treat, the Agency believes that the defined levels of effluent reductions will not be met if waste receipts from different categories are treated in a single treatment system. EPA has concluded that separate pretreatment steps are necessary in order to treat the waste receipts adequately for its constituents prior to commingling the wastes. For example, if oily wastes and metal-bearing wastes are mixed, selective metals precipitation will not remove certain constituents (i.e. n-decane, oil and grease) which would be removed if the oily waste is pretreated before precipitation. As discussed above, the approach which EPA has proposed would require monitoring to demonstrate compliance after oily waste treatment and after metal-bearing treatment. The EPA solicits comment on other approaches for implementing the proposal in order to address the problem of discharges from treatment of mixed subcategory wastes. EPA also requests data on the performance of treatment systems which are designed to treat waste that may be characterized in more than one subcategory.

9. Applicability of Guideline to POTWs Treating CWT Wastes

EPA is soliciting comment today also on how to treat wastes received for treatment at a POTW by tanker truck, trailer/roll-off bins or barges or other forms of shipment. EPA is aware that there are several POTWs receiving wastes for treatment that are not discharged to the POTW through sewers or pipes. EPA welcomes additional information and data on the subject.

The CWA provides that pretreatment standards apply to all discharges which pass through or interfere with POTW operations and all POTWs must comply with effluent limitations based on secondary treatment requirements and any more stringent limitations, including those necessary to meet water quality standards, treatment standards, or schedules of compliance established pursuant to any other Federal law or regulation. CWA Sections 301(a)(1) and 307(b). Under RCRA, under certain conditions, a POTW may accept hazardous waste for treatment. A POTW is deemed to have a permit for treatment of hazardous waste if, among other things, the POTW complies with the conditions of its NPDES permit and certain RCRA regulatory requirements (e.g., use of the RCRA manifest system, maintaining certain records). In addition, the waste must meet ''all Federal State, and local pretreatment requirements which would be applicable to the waste if it were being discharged into the POTW through a sewer, pipe or similar conveyance.'' 40 CFR 270.61(c)(4). Under this provision, therefore, EPA has concluded that a POTW cannot accept wastes for treatment via any form of shipment which are RCRA hazardous wastes unless these wastes comply with pretreatment requirements in today's guideline. Moreover, it is EPA's view that whether the CWT wastes are hazardous or non-hazardous, the pretreatment standard would apply to the CWT wastes. As proposed today, the pretreatment standards apply to the introduction of a pollutant to a POTW irrespective of the mechanism for introducing that pollutant to the POTW.

EPA is soliciting comment on how widespread is the practice of POTW treatment of wastes received from off-site via any form of shipment as well as its tentative conclusion that today's proposal would apply to such wastes.

10. Treatment of Incidental Organic Pollutants Detected in the Metals Subcategory

During the EPA sampling program, EPA collected analytical data on the presence of organic pollutants in the Metals Subcategory. Various organic pollutants were detected at low concentrations in the untreated CWT wastewater. EPA sampled treatment technologies to control the discharge of organic pollutants. In most circumstances, the organic pollutants detected at low concentrations in the treatment facility influent were found at non-detectable levels prior to any treatment for the organic pollutants. Because the initial concentrations of organic pollutants were very low, the addition of treatment chemicals and other sources of CWT wastewater caused the concentrations to become lower and thereby non-detectable. As previously discussed, EPA sampled carbon adsorption units to use as add-on technologies for the removal of organic compounds, but treatment performance for carbon adsorption units was found to be uniformly poor throughout the industry. EPA solicits comment on the necessity of control on low level organic pollutants for the Metals subcategory and technologies appropriate for the control of low level organics as well as analytical data to characterize the performance of such treatment technologies.

11. Additional Technologies for the Control of Concentrated Cyanide-Bearing Wastes

The BPT effluent limitations and standards for the pretreatment control of cyanide in the Metals Subcategory is based on the use of alkaline chlorination at specific operating conditions which enable the destruction of concentrated cyanide complexes. Two additional treatment technologies were sampled in the process of developing the proposed regulation. Performance by one treatment technology was uniformly inadequate for the treatment of concentrated cyanide waste. The additional treatment technology sampled performed well in the treatment of concentrated cyanide complexes, but is propriatary information. EPA solicits information on additional treatment technologies applicable to the treatment of concentrated cyanide complexes that are commercially available.

12. Probability and Cost of RCRA-Permitted Facilities Undergoing Closure

The Agency has predicted that a few companies may undergo bankruptcy as

a result of the proposed rulemaking. The predicted bankruptcies may result in closure of CWT facilities and the cost of such closure is attributable to this action. For RCRA permitted facilities, the cost of such closure may be significant. EPA solicits comment on the probability of closure of such facilities impacted by the proposed regulation and the costs associated with closure of the treatment operations.

13. Assessing the Effects of Conventional Pollutants

A large portion of the pollutant reductions for the proposed regulation are for conventional pollutants, especially oil and grease. Due the present methodology for the environmental assessment, the impacts of conventional pollutants are not taken into account for the proposed regulation. The Agency solicits comment on possible approaches for assessing the effect of conventional pollutants and pollutant parameters, such as TOC and COD, on the water quality of receiving streams and POTW operations in terms of inhibition and sludge contamination.

List of Subjects in 40 CFR Part 437

Environmental protection, Hazardous waste, Waste treatment and disposal, Water pollution control.

Dated: December 15, 1994.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended by adding part 437 as follows:

PART 437—THE CENTRALIZED WASTE TREATMENT INDUSTRY POINT SOURCE CATEGORY

General Provisions

Subpart A—Metals Treatment and Recovery Subcategory

Subpart B—Oils Treatment and Recovery Subcategory

Subpart C—Organics Treatment or Recovery Subcategory

Authority: 33 U.S.C. 1311, 1314, 1316, 1317, and 1361.

General Provisions

§ 437.1 General definitions.

In addition to the definitions set forth in 40 CFR part 401, the following definitions apply to this part:

(a) *Centralized waste treatment facility*—Any facility that treats any hazardous or non-hazardous industrial wastes received from off-site by tanker truck, trailer/roll-off bins, drums, barge, or other forms of shipment. A ''centralized waste treatment facility'' includes: A facility that treats waste received from off-site exclusively; and a facility that treats wastes generated on-site as well as waste received from off-site.

(b) *Centralized waste treatment wastewater*—Water that comes in contact with wastes received from off-site for treatment or recovery or that comes in contact with the area in which the off-site wastes are received, stored or collected.

(c) *Conventional pollutants*—The pollutants identified in section 304(a)(4) of the CWA and the regulations thereunder (biochemical oxygen demand (BOD_5), total suspended solids (TSS), oil and grease, pH, and fecal coliform).

(d) *Facility*—A facility is all contiguous property owned, operated, leased or under the control of the same person. The contiguous property may be divided by public or private right-of-way.

(e) *Metal-bearing wastes*—Wastes that contain metal pollutants from manufacturing or processing facilities or other commercial operations. These wastes may include, but are not limited to, the following: process wastewater, process residuals such as tank bottoms or stills and process wastewater treatment residuals, such as treatment sludges.

(f) *New source*—''New source'' is defined at 40 CFR 122.2 and 122.29.

(g) *Non-conventional pollutants*—Pollutants that are neither conventional pollutants nor priority pollutants.

(h) *Off-site*—''Off-site'' means outside the boundaries of a facility.

(i) *Oily wastes*—Wastes that contain oil and grease from manufacturing or processing facilities or other commercial operations. These wastes may include, but are not limited to, the following: spent lubricants, cleaning fluids, process wastewater, process residuals such as tank bottoms or stills and process wastewater treatment residuals, such as treatment sludges.

(j) *On-site*—''On-site'' means within the boundaries of a facility.

(k) *Organic wastes*—Wastes that contain organic pollutants from manufacturing or processing facilities or other commercial operations. These wastes may include, but are not limited to, process wastewater, process residuals such as tank bottoms or stills and process wastewater treatment residuals, such as treatment sludges.

(l) *Pipeline*—''Pipeline'' means an open or closed conduit used for the conveyance of material. A pipeline includes a channel, pipe, tube, trench or ditch.

(m) *POTW*—Publicly-owned treatment works as defined at 40 CFR 403.3 (o).

(n) *Priority pollutants*—The pollutants designated by EPA as priority in 40 CFR part 423, appendix A.

(o) *Process wastewater*—''Process wastewater'' is defined at 40 CFR 122.2.

§ 437.2 Applicability.

(a) Notwithstanding anything to the contrary in subchapter N of this chapter, the provisions of this part are applicable to that portion of wastewater discharges from a centralized waste treatment facility that result from the treatment or recovery of metals, oil, and organics from metal-bearing wastes, oily wastes and organic-bearing wastes received from off-site. The provisions of this Part are also applicable to that portion of wastewater discharge from a CWT facility contact water. The provisions of this part do not apply to that portion of wastewater discharges from a CWT facility that results from the treatment of wastes that are generated on-site which are subject to other applicable provisions of Subchapter N of this chapter.

(b) The provisions of this part do not apply to wastewater discharges at a centralized waste treatment facility that result from the following treatment operations: thermal destruction, incineration, stabilization, solidification, the blending of fuel and recycling of solvents from hazardous and non-hazardous industrial wastes received from off-site.

(c) The provisions of this part do not apply to discharges from a centralized waste treatment facility that result from the treatment or recovery of wastes received by pipeline from a facility that generates the waste.

§ 437.3 Monitoring requirements.

The following monitoring requirements apply to this part:

(a) The ''monthly average'' regulatory values shall be the basis for the monthly average effluent limitations in direct discharge permits and pretreatment standards. Compliance with the monthly average discharge limit is required regardless of the number of samples analyzed and averaged.

(b) Any centralized waste treatment facility that discharges wastewater that results from the treatment of metal-bearing waste, oily waste, or organic-bearing waste must monitor as follows:

(1) A centralized waste treatment facility must monitor to demonstrate compliance with applicable Subcategory A, B, or C limitations or standards.

(2) When a Centralized Waste Treatment facility: is subject to effluent limitations, new source performance standards or pretreatment standards in more than one Subpart of this Part (or any other Part of Subchapter N of this chapter), and (after treatment) mixes waste whose wastewater treatment discharges are subject to more than one Subpart of this Part (or any other Part of Subchapter N of this chapter), the owner or operator of the Centralized Waste Treatment facility must monitor for compliance with the limitations for each Subpart of this Part after treatment and before mixing of the waste for discharge with any other Subpart wastes, process wastewater subject to another effluent limitation or standard in Subchapter N of this chapter, or stormwater. A Centralized Waste Treatment facility is not required to monitor for compliance after treatment and before mixing of Subpart wastes that are mixed with other wastes for treatment and discharge if the following condition is met. The owner or operator of the Centralized Waste Treatment facility must demonstrate to the POTW or permitting authority that the Centralized Waste Treatment facility treating and discharging effluent from the mixture of wastes is capable of achieving the effluent limitation or standard for each Subpart.

(3) When a Centralized Waste Treatment facility: is subject to effluent limitations, new source performance standards or pretreatment standards in more than one Subpart of this Part (or any other Part of Subchapter N of this chapter), and (prior to treatment) mixes waste whose wastewater treatment discharges are subject to more than one Subpart of this Part (or any other Part of Subchapter N), the owner or operator of the Centralized Waste Treatment facility must demonstrate to the POTW or permitting authority that the Centralized Waste Treatment facility treating and discharging effluent from the mixture of wastes is capable of achieving the effluent limitation or standard for each Subpart.

(4) A centralized waste treatment facility must monitor for cyanide after cyanide treatment and before dilution with other waste streams. Periodic analysis for cyanide is not required for a centralized waste treatment facility in the metal-bearing waste subcategory when the following condition is met: The owner or operator of the facility certifies in writing to the POTW or permit issuing authority that the centralized waste treatment system is not treating wastes that contain more than 68 mg/l of Total Cyanide.

Subpart A—Metals Treatment and Recovery Subcategory

§ 437.10 Applicability; description of the Metals Subcategory.

The provisions of this subpart are applicable to that portion of wastewater discharges from a centralized waste treatment facility that result from the treatment of, or recovery of metals from, metal-bearing waste received from off-site and CWT facility contact water.

§ 437.11 Specialized definitions.

The general definitions, abbreviations, and methods of analysis set forth in 40 CFR part 401 and § 437.01 shall apply to this subpart.

§ 437.12 Effluent limitations representing the degree of effluent reduction attainable by the application of best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the effluent limitations listed in the following table representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT). These limitations apply to the pretreatment of metal-bearing waste which contain cyanide and the metals treatment effluent.

IN-FACILITY BPT LIMITATIONS FOR CYANIDE PRETREATMENT.—METALS SUBCATEGORY (MG/L)

Pollutant or pollutant parameter	Maximum for any one day	Monthly average
Total Cyanide	350	130

BPT EFFLUENT LIMITATIONS—METALS SUBCATEGORY (mg/l)

Pollutant or pollutant parameter	Maximum for any one day	Monthly average
Conventional Pollutants:		
Oil and Grease	45	11
TSS	55	18
Priority and Non-Conventional Pollutants:		
Aluminum	0.72	0.16
Antimony	0.14	0.031
Arsenic	0.076	0.017
Barium	0.14	0.032
Cadmium	0.73	0.16
Chromium	0.77	0.17

BPT EFFLUENT LIMITATIONS—METALS SUBCATEGORY (mg/l)—Continued

Pollutant or pollutant parameter	Maximum for any one day	Monthly average
Cobalt	0.73	0.16
Copper	1.0	0.23
Hexavalent Chromium	0.14	0.077
Iron	2.4	0.54
Lead	0.37	0.082
Magnesium	9.9	2.2
Manganese	0.18	0.039
Mercury	0.013	0.0030
Nickel	5.4	1.2
Silver	0.028	0.0063
Tin	0.20	0.044
Titanium	0.021	0.0047
Total Cyanide	4.4	1.2
Zinc	1.2	0.27

§ 437.13 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). The limitations for TSS and Oil and Grease shall be the same as those specified in § 437.12 for the best practicable control technology currently available (BPT).

§ 437.14 Effluent limitations representing the degree of effluent reduction attainable by the application of best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT). The limitations shall be the same as those specified in § 437.12 for the best practicable control technology currently available (BPT) for the priority and non-conventional pollutants listed.

§ 437.15 New source performance standards (NSPS).

Any new source subject to this subpart must achieve new source performance standards (NSPS). These limitations apply to the metals treatment effluent. The limitations shall be the same as those specified in § 437.12 for the best practicable control technology currently available (BPT).

§ 437.16 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that introduces pollutants into a publicly-owned treatment works (or any source that introduces hazardous or non-hazardous waste into a POTW from off-site by tanker truck, trailer/roll-off bins, drums, barge or other form of shipment) must: Comply with 40 CFR part 403; and achieve the following pretreatment standards for existing sources (PSES).

IN-FACILITY PRETREATMENT STANDARDS FOR CYANIDE PRETREATMENT.—METALS SUBCATEGORY (mg/l)

Pollutant or pollutant parameter	Maximum for any one day	Monthly average
Total Cyanide	350	130

PRETREATMENT STANDARDS.—METALS SUBCATEGORY (mg/l)

Pollutant or pollutant parameter	Maximum for any one day	Monthly average
Aluminum	0.72	0.16
Antimony	0.14	0.031
Arsenic	0.076	0.017
Cadmium	0.73	0.16
Chromium	0.77	0.17
Cobalt	0.73	0.16
Copper	1.0	0.23
Hexavalent Chromium	0.14	0.077
Iron	2.4	0.54
Lead	0.37	0.082
Magnesium	9.9	2.2
Manganese	0.18	0.039
Mercury	0.013	0.0030
Nickel	5.4	1.2
Silver	0.028	0.0063
Tin	0.20	0.044
Titanium	0.021	0.0047
Total Cyanide	4.4	1.2
Zinc	1.2	0.27

§ 437.17 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart that introduces pollutants into a publicly-owned treatment works (or any new source that introduces hazardous or non-hazardous waste into a POTW from off-site by tanker truck, trailer/roll-off bins, drums, barge or other form of shipment) must: Comply with 40 CFR part 403; and achieve the pretreatment standards for new sources (PSNS). The limitations shall be the same as those specified in § 437.16 for the pretreatment standards for existing sources (PSES).

Subpart B—Oils Treatment and Recovery Subcategory

§ 437.20 Applicability; description of the Oils Subcategory.

The provisions of this subpart are applicable to that portion of wastewater discharges from a centralized waste treatment facility that result from the treatment of, or recovery of oils from, oily waste received from off-site and CWT facility contact water.

§ 437.21 Specialized definitions

The general definitions, abbreviations, and methods of analysis set forth in 40 CFR part 401 and § 437.01 shall apply to this subpart.

§ 437.22 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

BPT EFFLUENT LIMITATIONS.—OILS SUBCATEGORY (mg/l)

Pollutant or pollutant parameter	Option 2		Option 3	
	Maximum for any one day	Monthly average	Maximum for any one day	Monthly average
Conventional Pollutants:				
Oil and Grease	30,000	5,900	240	64

BPT EFFLUENT LIMITATIONS.—OILS SUBCATEGORY (mg/l)—Continued

Pollutant or pollutant parameter	Option 2		Option 3	
	Maximum for any one day	Monthly average	Maximum for any one day	Monthly average
TSS	24	8.2	4.0	1.4
Priority and Non-Conventional Pollutants:				
1,1,1-Trichloroethane	1.6	1.0	0.18	0.12
2-Propanone	41	22	130	44
4-Chloro-3-Methyl Phenol	5.2	4.4	0.96	0.54
Aluminum	2.3	0.57	0.085	0.038
Barium	0.10	0.026	0.0027	0.0012
Benzene	9.0	6.8	1.8	1.4
Butanone	3.7	2.0	13	4.3
Cadmium	1.5	0.37	0.0046	0.0020
Chromium	2.2	0.54	0.010	0.0045
Copper	2.0	0.50	0.016	0.0073
Ethylbenzene	1.1	0.86	0.085	0.066
Iron	75	19	0.40	0.18
Lead	5.0	1.2	0.076	0.034
Manganese	5.4	1.3	0.043	0.019
Methylene Chloride	3.9	2.0	2.2	0.91
m-Xylene	1.6	1.2	0.074	0.058
Nickel	120	29	2.2	0.99
n-Decane	0.18	0.096	0.19	0.067
n-Docosane	0.18	0.096	0.19	0.067
n-Dodecane	0.18	0.096	0.19	0.067
n-Eicosane	0.18	0.096	0.19	0.067
n-Hexacosane	0.18	0.096	0.19	0.067
n-Hexadecane	0.18	0.096	0.19	0.067
n-Octadecane	0.18	0.096	0.19	0.067
n-Tetradecane	0.18	0.096	0.19	0.067
o&p-Xylene	0.86	0.65	0.045	0.035
Tetrachloroethene	0.23	0.14	0.032	0.016
Tin	0.82	0.20	0.12	0.056
Toluene	17	13	1.8	1.4
Tripropyleneglycol Methyl Ether	280	150	160	57
Zinc	22	5.6	0.54	0.24

§ 437.23 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). The limitations for TSS and Oil and Grease shall be the same as those specified in § 437.22 for the best practicable control technology currently available (BPT).

§ 437.24 Effluent limitations representing the degree of effluent reduction attainable by the application of best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT). The limitations shall be the same as those specified in § 437.22 for the best practicable control technology currently available (BPT) for the priority and non-conventional pollutants listed.

§ 437.25 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS). These limitations apply to the oils treatment effluent. The limitations shall be the same as those specified in § 437.22 for the best practicable control technology currently available (BPT).

§ 437.26 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that introduces pollutants into a publicly-owned treatment works (or any source that introduces hazardous or non-hazardous waste into a POTW from off-site by tanker truck, trailer/roll-off bins, drums, barge or other form of shipment) must: comply with 40 CFR part 403; and achieve the following pretreatment standards for existing sources (PSES).

PRETREATMENT STANDARDS.—OILS SUBCATEGORY (mg/l)

Pollutant or pollutant parameter	Option 2		Option 3	
	Maximum for any one day	Monthly average	Maximum for any one day	Monthly average
1,1,1-Trichloroethane	1.6	1.0	0.18	0.12
2-Propanone	41	22	130	44
4-Chloro-3-Methyl Phenol	5.2	4.4	0.96	0.54
Aluminum	2.3	0.57	0.085	0.038
Barium	0.10	0.026	0.0027	0.0012
Benzene	9.0	6.8	1.8	1.4
Butanone	3.7	2.0	13	4.3
Cadmium	1.5	0.37	0.0046	0.0020
Chromium	2.2	0.54	0.010	0.0045
Copper	2.0	0.50	0.016	0.0073
Ethylbenzene	1.1	0.86	0.085	0.066
Iron	75	19	0.40	0.18
Lead	5.0	1.2	0.076	0.034
Manganese	5.4	1.3	0.043	0.019
Methylene Chloride	3.9	2.0	2.2	0.91
m-Xylene	1.6	1.2	0.074	0.058
Nickel	NA	NA	2.2	0.99
n-Decane	0.18	0.096	0.19	0.067
n-Docosane	0.18	0.096	0.19	0.067
n-Dodecane	0.18	0.096	0.19	0.067
n-Eicosane	0.18	0.096	0.19	0.067
n-Hexacosane	0.18	0.096	0.19	0.067
n-Hexadecane	0.18	0.096	0.19	0.067
n-Octadecane	0.18	0.096	0.19	0.067
n-Tetradecane	0.18	0.096	0.19	0.067
o&p-Xylene	0.86	0.65	0.045	0.035
Tetrachloroethene	0.23	0.14	0.032	0.016
Tin	0.82	0.20	0.12	0.056
Toluene	17	13	1.8	1.4
Tripropyleneglycol Methyl Ether	NA	NA	160	57
Zinc	NA	NA	0.54	0.24

NA= No pretreatment standards are developed: pollutant was determined not to ''pass-through.''

§ 437.27 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart that introduces pollutants into a publicly-owned treatment works (or any new source that introduces hazardous or non-hazardous waste into a POTW from off-site by tanker truck, trailer/roll-off bins, drums, barge or other form of shipment) must: Comply with 40 CFR part 403; and achieve pretreatment standards for new sources (PSNS). The limitations shall be the same as those specified in § 437.26 of this subpart for the pretreatment standards for existing sources (PSES).

Subpart C—Organics Treatment or Recovery Subcategory

§ 437.30 Applicability; description of the Organics Subcategory.

The provisions of this subpart are applicable to that portion of wastewater discharges from a centralized waste treatment facility that result from the treatment of, or recovery of organics from, organic-bearing waste received from off-site and CWT facility contact water.

§ 437.31 Specialized definitions.

The general definitions, abbreviations, and methods of analysis set forth in 40 CFR part 401 and § 437.01 shall apply to this subpart.

§ 437.32 Effluent limitations representing the degree of effluent reduction attainable by the application of best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

BPT EFFLUENT LIMITATIONS.—ORGANICS SUBCATEGORY (mg/l)

Pollutant or pollutant parameter	Maximum for any one day	Monthly average
Conventional Pollutants:		
BOD_5	163	53
Oil and Grease	13	4.9
TSS	216	61
Priority and Non-Conventional Pollutants:		
1,1,1,2-Tetrachloroethane	0.013	0.011
1,1,1-Trichloroethane	0.021	0.018
1,1,2-Trichloroethane	0.21	0.17
1,1-Dichloroethane	0.037	0.027
1,2,3-Trichloropropane	0.016	0.014
1,2-Dibromoethane	0.014	0.011
1,2-Dichloroethane	0.031	0.025
2,3-Dichloroaniline	0.17	0.14
Butanone	1.1	0.84
2-Propanone	1.6	1.3
4-Methyl-2-Pentanone	0.093	0.074
Acetophenone	0.048	0.022
Aluminum	1.3	0.75
Antimony	0.42	0.24
Barium	3.8	2.2
Benzene	0.014	0.011

BPT EFFLUENT LIMITATIONS.—ORGANICS SUBCATEGORY (mg/l)—Continued

Pollutant or pollutant parameter	Maximum for any one day	Monthly average
Benzoic Acid	0.49	0.24
Carbon Disulfide	0.16	0.11
Chloroform	0.56	0.48
Diethyl Ether	0.070	0.056
Hexanoic Acid	0.51	0.25
Lead	0.16	0.095
Methylene Chloride	1.1	0.97
Molybdenum	0.98	0.57
m-Xylene	0.014	0.011
o-Cresol	0.051	0.025
Phenol	0.79	0.38
Pyridine	0.71	0.24
p-Cresol	0.098	0.040
Tetrachloroethene	0.73	0.53
Tetrachloromethane	0.013	0.011
Toluene	0.014	0.011
trans-1,2-dichloroethene	0.15	0.11
Trichloroethene	1.2	0.86
Vinyl Chloride	0.071	0.052
Zinc	0.43	0.25

§ 437.33 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). The limitations for BOD_5. TSS, and Oil and Grease shall be the same as those specified in § 437.32 of this subpart for the best practicable control technology currently available (BPT).

§ 437.34 Effluent limitations representing the degree of effluent reduction attainable by the application of best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT). The limitations shall be the same as those specified in § 437.32 for the best practicable control technology currently available (BPT) for the priority and non-conventional pollutants listed.

§ 437.35 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS). These limitations apply to the organics treatment effluent. The limitations shall be the same as those specified in § 437.32 for the best practicable control technology currently available (BPT).

§ 437.36 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that introduces pollutants into a publicly-owned treatment works (or any source that introduces hazardous or non-hazardous waste into a POTW from off-site by tanker truck, trailer/roll-off bins, drums, barge or other form of shipment) must: comply with 40 CFR part 403; and achieve the following pretreatment standards for existing sources (PSES).

PRETREATMENT STANDARDS—ORGANICS SUBCATEGORY (mg/l)

Pollutant or pollutant parameter	Maximum for any one day	Monthly average
1,1,1,2-Tetrachloroethane	0.013	0.011
1,1,1-Trichloroethane	0.021	0.018
1,1,2-Trichloroethane	0.21	0.17
1,1-Dichloroethene	0.037	0.027
1,2,3-Trichloropropane	0.016	0.014
1,2-Dibromoethane	0.014	0.011
1,2-Dichloroethane	0.031	0.025
2,3-Dichloroaniline	0.17	0.14

PRETREATMENT STANDARDS—ORGANICS SUBCATEGORY (mg/l)—Continued

Pollutant or pollutant parameter	Maximum for any one day	Monthly average
4-Methyl-2-Pentanone	0.093	0.074
Acetophenone	0.048	0.022
Aluminum	1.3	0.75
Antimony	0.42	0.24
Barium	3.8	2.2
Benzene	0.014	0.011
Benzoic Acid	0.49	0.24
Butanone	1.1	0.84
Carbon Disulfide	0.16	0.11
Chloroform	0.56	0.48
Diethyl Ether	0.070	0.056
Hexanoic Acid	0.51	0.25
Methylene Chloride	1.1	0.97
Molybdenum	0.98	0.57
m-Xylene	0.014	0.011
o-Cresol	0.051	0.025
p-Cresol	0.098	0.040
Tetrachloroethene	0.73	0.53
Tetrachloromethane	0.013	0.011
Toluene	0.014	0.011
trans-1,2-dichloroethene	0.15	0.11
Trichloroethene	1.2	0.86
Vinyl Chloride	0.071	0.052

§ 437.37 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart that introduces pollutants into a publicly-owned treatment works (or any new source that introduces hazardous or non-hazardous waste into a POTW from off-site by tanker truck, trailer/roll-off bins, drums, barge or other form of shipment) must: comply with 40 CFR part 403; and achieve pretreatment standards for new sources (PSNS). The limitations shall be the same as those specified in § 437.36 for the pretreatment standards for existing sources (PSES).

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Part III

Department of Transportation

Federal Highway Administration
Federal Transit Administration

Interim Policy and Questions and Answers on Public Involvement in Transportation Decisionmaking; Notice

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Federal Transit Administration

[FHWA/FTA Docket No. 94–27]

Interim Policy and Questions and Answers on Public Involvement in Transportation Decisionmaking

AGENCIES: Federal Highway Administration (FHWA), Federal Transit Administration (FTA), DOT.

ACTION: Notice; request for comments.

SUMMARY: This notice announces the joint FHWA and FTA Interim Policy on Public Involvement and Questions and Answers on Public Involvement in Transportation Decisionmaking. The Interim Policy outlines the principles the agencies intend to use in carrying out their responsibilities for assuring that State departments of transportation, metropolitan planning organizations, and transportation providers involve the public in transportation decisionmaking from the earliest stages of metropolitan and statewide transportation planning through federally-aided transportation project development and construction. The Questions and Answers on Public Involvement in Transportation Decisionmaking are agency guidance on public involvement.

DATES: Comments must be received on or before April 30, 1995.

ADDRESSES: Written comments should be sent to the Federal Highway Administration, Office of the Chief Counsel, Docket No. 94–27, Room 4232, HCC–10, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For the FHWA: Mrs. Florence W. Mills, Environmental Programs Branch (HEP–32), (202) 366–2062 or Mr. Robert J. Black, FHWA Office of the Chief Counsel (HCC–31), (202) 366–1359. For the FTA: Mrs. Jennifer L. Weeks, Resource Management Division (TGM–21), (202) 366–6510 or Mr. Scott A. Biehl, FTA Office of the Chief Counsel (TCC–40), (202) 366–4063. Both agencies are located at 400 Seventh Street, SW., Washington, DC 20590. Office hours for the FHWA are from 7:45 a.m. to 4:15 p.m., e.t., and for the FTA are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Recent statutes and regulations have increased both the FHWA's and the FTA's longstanding responsibility for public involvement in transportation decisionmaking. The metropolitan and statewide planning provisions in sections 1024, 1025, and 3012 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102–240, 105 Stat. 1914, 1955, 1962, and 2098, amended Title 23, U.S.C., and Title 49, U.S.C., chapter 53 (formerly the Federal Transit Act) by revising 23 U.S.C. 134 and the FTA's planning authorities. Title 23, U.S.C., and Title 49, U.S.C., govern the metropolitan transportation planning process. The ISTEA also established a new provision for statewide transportation planning at 23 U.S.C. 135. These statutes require that interested parties be afforded an opportunity for public comment on transportation plans and programs during the metropolitan and statewide transportation planning processes. The FHWA and the FTA revised their previous planning regulations to implement these changes and published the final regulations on October 28, 1993 (58 FR 58040). These planning regulations are found at 23 CFR Part 450.

There are three statutes and associated regulations governing public involvement during the environmental studies stage of highway and transit project development: (1) the National Environmental Policy Act (NEPA), Pub. L. 91–190, 83 Stat. 852, as amended (codified at 42 U.S.C. 4321 *et seq.*), implemented in regulations found at 40 CFR Parts 1500–1508); (2) 23 U.S.C 128; and (3) 23 U.S.C. 109(h). The FHWA and the FTA are in the early stages of revising their joint regulation on environmental impact and related procedures found in 23 CFR Part 771.

As part of an ongoing commitment to public involvement throughout the transportation planning and project development processes, the FHWA and the FTA are soliciting public input on this Interim Policy and guidance. The Interim Policy frames Federal policies on public involvement in actions of the FHWA and the FTA. The Questions and Answers provide additional information interpreting regulations with respect to public involvement. The FHWA and the FTA are particularly interested in comments on how their policy and guidance can effectively support State departments of transportation, metropolitan planning organizations, and transportation providers in developing and implementing locally effective public involvement processes and techniques which encompass all members of the public, including those who are currently under served by our transportation system. The FHWA and the FTA also seek information on additional public involvement issues where guidance or technical information is needed. The two agencies are issuing this Interim Policy and guidance to start discussion on these topics. The Interim Policy and guidance are effective as of December 5, 1994. The final policy will reflect the comments received on the Interim Policy. Based on public and agency input, the two agencies will consider additional guidance in public involvement.

The text of the Interim Policy and the Questions and Answers follows.

FHWA/FTA Interim Policy on Public Involvement

''I know of no safe depository of the ultimate powers of society but the people themselves.''—Thomas Jefferson

Secretary of Transportation Federico Peña's Strategic Plan establishes the objective of putting people first in all of the Department's endeavors. Consistent with this objective, it is the policy of the FHWA and the FTA to aggressively support proactive public involvement at all stages of planning and project development. State departments of transportation, metropolitan planning organizations, and transportation providers are required to develop, with the public, effective involvement processes which are custom-tailored to local conditions. The performance standards for these proactive public involvement processes include early and continuous involvement; reasonable public availability of technical and other information; collaborative input on alternatives, evaluation criteria, and mitigation needs; open public meetings where matters related to Federal-aid highway and transit programs are being considered; and open access to the decisionmaking process prior to closure.

To achieve these objectives, the FHWA and FTA commit to:

1. Promoting an active role for the public in the development of transportation plans, programs and projects from the early stages of the planning process through detailed project development.

2. Promoting the shared obligation of the public and decisionmakers to define goals and objectives for the State and/or metropolitan transportation system, to identify transportation and related problems, to develop alternatives to address the problems, and to evaluate the alternatives on the basis of collaboratively identified criteria.

3. Ensuring that the public is actively involved in the development of public involvement procedures in ways that go

beyond commenting on draft procedures.

4. Strongly encouraging the State departments of transportation, metropolitan planning organizations, and transportation providers to aggressively seek to identify and involve the affected and interested public, including those traditionally underserved by existing transportation systems and facilities.

5. Strongly encouraging planning and implementing agencies to use combinations of different public involvement techniques designed to meet the diverse needs of the broad public.

6. Sponsoring outreach, training and technical assistance, and providing information for Federal, State, regional, and local transportation agencies on effective public involvement procedures.

7. Ensuring that statewide and metropolitan planning work programs provide for effective public involvement.

8. Carefully evaluating public involvement processes and procedures to assess their success at meeting the performance requirements specified in the appropriate regulations during our joint certification reviews, metropolitan planning and conformity findings, State Transportation Improvement Program (STIP) approvals and project oversight.

Gordon J. Linton, Administrator,
Federal Transit Administration
Rodney E. Slater, Administrator, Federal Highway Administration

FHWA/FTA Questions and Answers on Public Involvement in Transportation Decisionmaking

This guidance responds to questions raised during the eight regional FHWA/FTA outreach meetings on the planning regulations (23 CFR 450) as well as at other meetings where the planning regulations have been discussed.

1. Why are changes in public involvement needed under the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and related policies and regulations?

Public involvement in transportation investment decisionmaking is central to accomplishing the vision of the ISTEA. The legislation recognizes that transportation investment decisions have far-reaching effects and thus it requires that metropolitan and statewide transportation decisions consider a wide array of factors including land use impacts and ''the overall social, economic, energy, and environmental effects of transportation decisions'' (23 U.S.C. 134(f) and 135(c)). Many of these factors reflect community values and are not easily quantifiable. Public input is essential in adequately considering them.

The legislation also recognizes the diversity of views on transportation problems and investment options. The ISTEA states that, prior to adopting plans or programs, the MPO or State DOT ''shall provide citizens, affected public agencies, representatives of transportation agency employees, private providers of transportation, other affected employee representatives, and other interested parties with a reasonable opportunity to comment'' (23 U.S.C. 134 and 135). *Federal DOT policy and FHWA and FTA regulations build on these principles by requiring MPOs and State DOTs to establish their own continuing public involvement processes* which actively seek involvement throughout transportation decisionmaking, from the earliest planning stages, including the identification of the purpose and need, through the development of the range of potential solutions, up to and including the decision to implement specific solutions. These regulations provide a basic set of performance standards indicating what the FHWA and FTA expect public involvement for plans, programs, major transportation investments, and transportation projects to achieve. In sum, *the ISTEA and its implementing regulations envision an open decisionmaking process* eliciting the input and active involvement of all affected individuals, groups, and communities, and addressing the full range of effects that the transportation investments may have on our communities and our lives.

2. What are some of the key considerations in planning for effective public involvement?

An effective public involvement process provides for an *open exchange* of information and ideas between the public and transportation decisionmakers. The overall objective of an area's public involvement process is that it be *proactive, provide complete information, timely public notice, full public access to key decisions, and opportunities for early and continuing involvement* (23 CFR 450.212(a) and 450.316(b)(1)). It also provides mechanisms for the agency or agencies to solicit public comments and ideas, identify circumstances and impacts which may not have been known or anticipated by public agencies, and, by doing so, to build support among the public who are stakeholders in transportation investments which impact their communities.

Six useful key elements in planning for effective public involvement are: (1) Clearly-defined purpose and objectives for initiating a public dialogue on transportation plans, programs, and projects, (2) Identification of specifically who the affected public and other stakeholder groups are with respect to the plan(s), program(s), and project(s) under development, (3) Identification of techniques for engaging the public in the process, (4) Notification procedures which effectively target affected groups, (5) Education and assistance techniques which result in an accurate and full public understanding of the transportation problem, potential solutions, and obstacles and opportunities within various solutions to the problem, and, (6) Follow through by public agencies demonstrating that decisionmakers seriously considered public input.

3. What are the indicators of an effective public involvement process?

A good indicator of an effective public involvement process is a *well informed public which feels it has opportunities to contribute input into transportation decisionmaking processes* through a broad array of involvement opportunities at all stages of decisionmaking. In contrast, an ineffective process is one that relies on one or two public meetings or hearings to obtain input immediately prior to decisionmaking on developed draft plans and programs. Public meetings that are well attended, frequent news coverage on transportation issues, public forums where a broad representation of diverse interests is in attendance, and plans, TIPs, MIS alternatives, and project designs which reflect an understanding and consideration of public input are all indicators that the public involvement process is effective.

4. When should an agency update its public involvement process?

The planning regulations do not specify a schedule for updating public involvement processes. Rather, an *existing process should be updated whenever conditions indicate that it is ineffective.* The enhanced focus on public involvement in the ISTEA and the need for more proactive outreach than has been the case in the past, however, necessitate an *evolutionary approach.* The public involvement process should be an integral part of an agency's activities and its adequacy should be explicitly considered each time an agency makes major program changes, initiates new studies to identify solutions to transportation problems, and updates its plans.

5. How does the State DOT and/or MPO involve the public in developing or revising the public involvement process?

Involving the public in the development or revision of public involvement processes helps MPOs and State DOTs identify involvement approaches that work. Techniques for doing this include: distributing *easily understood materials* explaining why this involvement is important, holding *focus groups* on the transportation decisionmaking process, *brainstorming* with the public including members of the public who have not traditionally been involved in transportation decisions, inviting the community to participate in *presentations* on the short-term and long-term transportation challenges the region or State faces, and making presentations to civic organizations, senior citizens' groups, minority groups, and other public agencies who are stakeholders in transportation decisions (i.e., health and human services departments or economic development departments).

6. Is the State DOT or MPO required to have a 45-day public comment period on revisions to its currently adopted public involvement process?

Yes. The 45-day public comment period also applies to revisions to an adopted public involvement process. Processes adopted before November 23, 1993, must be reviewed and appropriately updated so they are consistent with the joint planning regulations. If the review finds that the previously adopted processes are consistent with the regulations but have not been subjected to the 45-day comment period, the State DOT or MPO must provide a 45-day comment period.

7. How do FHWA and FTA define the ''public''?

The ISTEA specifically identifies various segments of the public and the transportation industry that must be given the opportunity to participate, including ''*citizens, affected public agencies, representatives of transportation agency employees, other affected employee representatives, private providers of transportation and other interested parties*'' (e.g., 23 U.S.C. 134(h)). The FHWA and FTA define the public broadly as including all individuals or groups who are potentially affected by transportation decisions. This includes anyone who resides in, has interest in, or does business in a given area which may be affected by transportation decisions. The public includes both individuals and organized groups. In addition, it is important to *provide similar opportunities for the participation of all private and public providers of transportation services,* including, but not limited to, the trucking and rail freight industries, rail passenger industry, taxi cab operators, and all conventional and unconventional transit service operators. Finally, those *persons traditionally underserved by existing transportation systems* such as low income or minority households and the elderly should be explicitly encouraged to participate in the public involvement process.

8. How should an agency identify and address the transportation needs of persons and groups who have been traditionally underserved by existing transportation systems?

This presents a formidable challenge to transportation agencies because these individuals and groups often do not have the resources to travel to meetings, an ability to participate in meetings scheduled during their work hours, or an understanding of how or why to get involved in the transportation decisionmaking process.

The identification of these groups and individuals also presents a challenge. Transportation agencies should begin by identifying *organized groups* including persons with disabilities, minority community groups, ethnic groups and organizations, and Native Americans. Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' directs Federal agencies to conduct existing programs so as to identify and address disproportionately high and adverse environmental effects on minority, low income, and Native American communities. Techniques and strategies to identify the transportation underserved include: *notices in non-English language newspapers; public service announcements on radio stations which tailor their programming to non-English speaking Americans; and fliers and notices on public involvement opportunities distributed to senior citizens' centers, minority neighborhoods, urban housing projects.*

Addressing the needs of these groups will require gaining a thorough understanding both of why they have been traditionally underserved and of what their current and future transportation needs are. Continuous interaction between these groups and transportation professionals will be critical to better serving their needs in the future.

9. Who are the public and private providers and users of unconventional transportation services and how should they be included in the public involvement process?

Unconventional mass transportation services include school buses; transportation for the elderly, persons with disabilities, and children in Head Start; and other non-fixed route or unscheduled transportation. Both users and providers are members of the general public. Users of these unconventional transportation services tend to be underserved by the mainstream transportation system, and should be treated as such by the public involvement process. Traditionally, providers of unconventional transportation are social service agencies providing specialized, dedicated transit services (e.g., vans or buses) to fill gaps in the mobility needs of participants in certain public and private programs. These providers should be approached similarly to other public agencies. Their input should be sought out on effective ways to address transportation problems because they have experience in serving many of the traditionally underserved which traditional transportation agencies may not have. Other public and private transportation providers, which may or may not be considered to be ''conventional,'' similarly need to be actively involved in MPO and State transportation decisionmaking. These may include trucking and rail freight carriers, representatives of transportation employees, and representatives of ports and airports. The creation of *special committees or advisory groups* may provide an organized structure to receive the input of transportation industry groups on an ongoing basis.

10. How do the public involvement requirements for project development and the NEPA process apply to public involvement for major transportation investment studies (MIS)?

An MPO's overall public involvement process should describe the approach to be used to involve the public in any MIS conducted in that metropolitan planning area, regardless of whether the lead agency for the MIS is the MPO itself, the State DOT, or the transit operator. At *the start of the interagency consultation,* the cooperating agencies need to *tailor a specific public involvement strategy for the MIS.* The strategy should engage the public in the consideration of the purpose and need for a major investment as well as in the development and evaluation of all alternatives. If the MIS incorporates development of a NEPA document, the public involvement strategy must comply with the public involvement provisions of 23 CFR Part 771 or 40 CFR Part 622.

11. With respect to Federal Lands Agency projects (especially Indian Reservation Roads projects), how can the State DOT and MPO ensure that public involvement has taken place

within the planning process in the STIP/TIP?

First, it is necessary for the State and MPO to provide for active involvement by the Federal Lands Agencies and Indian tribal governments in statewide or metropolitan transportation planning and programming. Such involvement allows all participants to coordinate plans and programs of projects under consideration by the various implementing agencies. However, when planning for the involvement of Indian tribal governments, it is important for agency staff to recognize and be sensitive to tribal customs and to the nationally recognized sovereignty of tribal governments. As a result, *tribal governments should be actively sought for participation in the development of metropolitan and State plans and programs as independent government bodies* rather than as specific minority groups.

Second, each of the Federal Lands Agencies has its own procedures for transportation planning that comply with guidance from the FHWA's Federal Lands Highway Office which administers the Federal Lands Highway Program. Public involvement may not always occur during the development of transportation improvement programs for each Federal Lands Agency or Indian tribe. Therefore, while metropolitan area public involvement on the metropolitan TIP can serve as a surrogate for public involvement on the STIP for that area, no such assumption can be made for a Federal Lands Agency or tribal TIP. Because the Federal Lands Agency or tribal public involvement process may not satisfy the State DOT or MPO public involvement process for transportation planning, the State DOT and MPO must determine whether other public involvement measures are needed.

Third, the State and MPO (with FHWA and FTA field offices, as appropriate) should *work proactively with the Federal Lands Agencies and Indian Tribal Governments* to gain an understanding of procedures regarding development of each agency's TIP. These procedures may vary considerably from agency to agency. Areas to examine include the schedule for TIP development; the format of the TIP; and plans for meeting with various groups, members of the public, and Tribal Governments during TIP development.

12. Does reasonable public access to technical and policy information include access to technical assumptions underlying the planning and emissions models used in carrying out transportation decisionmaking and air quality conformity determinations?

Yes. Under the ISTEA and related regulations, *the public must have reasonable access to technical assumptions and specifications used in planning and emissions models.* This includes access to input assumptions such as population projections, land use projections, fares, tolls, levels of service, the structure and specifications of travel demand and other evaluation tools. To the maximum extent possible, all technical information should be made available in formats which are easily accessible and understandable by the general public.

Special requests for raw data, data in specific formats, or requests for other information must be considered in terms of their reasonableness with respect to preparation time and costs. *Public involvement procedures should include parameters for determining reasonableness.* In order to facilitate public involvement yet conserve limited staff resources, State DOTs and MPOs should consider making information available to interested parties on a regular basis through communication tools such as: reports, electronic bulletin boards, computer disks, data compilations, briefings, question and answer sessions, and telephone hotlines. Reports or other written documents should be easily accessible to the public in public libraries, educational institutions, government offices, or other places and at times convenient to the public.

When the public agency receives a request to perform an analysis that it had not considered, the State DOT or MPO needs to make a determination as to the reasonableness of the request. If the State DOT or MPO decides to perform the analysis, it should make all relevant information available to all interested parties. If it decides not to include the analysis as part of its transportation decisionmaking, it should respond to the request by indicating why it decided not to do so. The early involvement of interested parties in the analytical process can facilitate early agreement on the scope and range of analyses to be conducted by the public agency.

When agency staff conducts analyses that are not required for the transportation planning process and on which non-Federal funds are used, the agency is not obligated to make such information available. State DOTs and MPOs are encouraged to make such information available, given the premise that transportation decisionmaking is an open process. Similarly, State DOTs and MPOs should review State and local regulations which may mandate that such information be made available to the public.

13. How can State DOTs and MPOs demonstrate ''explicit consideration and response to public input,'' as required by 23 CFR 450.212 and 23 CFR 450.316?

State DOTs and MPOs should incorporate input from the public into decisionmaking, when warranted, with the understanding that not all parties will get exactly what they want. However, *the public must receive assurance that its input is valued and considered* in decisionmaking so that it feels that the time and energy expended in getting involved is meaningful and worthwhile. To do this, State DOTs and MPOs should both *maintain records* of public involvement activities, input, comments, and concerns as well as *document requests* for information and responses to input received during the public involvement process. Agencies can keep records and provide feedback in a variety of ways. Techniques for providing feedback include: regularly published newsletters, special inserts into general circulation newspapers, radio programs, telephone hotlines with project updates, public access television programs, and reports or publications describing how projects or programs are progressing.

Under the Environmental Protection Agency's transportation conformity regulations (40 CFR 51), when an MPO receives significant comments on a metropolitan transportation plan or TIP from the public or through the interagency consultation process, it *must provide a summary, analysis, and report on how the comments were responded to as part of the final metropolitan transportation plan and TIP.*

14. What types of revisions to plans, TIPs, and STIPs do not require additional opportunity for public comment and/or publication under 23 CFR 450.316(b)(viii) and 23 CFR 450.212(d)?

Minor changes in plans, TIPs, and STIPs generally can be made after the MPO or State DOT has completed its public comment process without further opportunities for public involvement. Examples may include: minor changes in project scope or costs, and moving minor or non-controversial projects among the first 3 years of the TIP/STIP. However, MPOs and State DOTs should identify what are to be considered as minor changes, with the public, during the development of the public involvement process. What may appear to be minor to the public agency may not be considered minor to the public. This gives the public the chance to provide input on these definitions and

for a common understanding on the public involvement procedures to be used to deal with specific types of changes to TIPs and STIPs.

(23 U.S.C. 109(h), 128, and 315; 49 CFR 1.48; sections 1024, 1025, and 3012, Pub. L. 102–240, 105 Stat. 1914)

Issued on: January 19, 1995.

Rodney E. Slater,

Federal Highway Adminstration.

Gordon J. Linton,

Federal Transit Administration.

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Part IV

Department of Agriculture

Food and Consumer Service

7 CFR Parts 210 and 220

National School Lunch Program and School Breakfast Program: Compliance With the Dietary Guidelines for Americans and Food-Based Menu Systems; Proposed Rule and Notice of Public Meeting

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Parts 210 and 220

RIN 0584–AB94

National School Lunch Program and School Breakfast Program: Compliance With the Dietary Guidelines for Americans and Food-Based Menu Systems

AGENCY: Food and Consumer Service, USDA.

ACTIONS: Proposed rule.

SUMMARY: The Healthy Meals for Healthy Americans Act of 1994 requires, for purposes of the National School Lunch and School Breakfast Programs, that a variety of meal planning approaches be made available to school food authorities, including ''food-based menu systems.'' The food-based menu systems concept is intended to supplement the nutrient-based menu planning provisions previously proposed by the Department of Agriculture on June 10, 1994. In addition, the Act requires that school meals comply with the *Dietary Guidelines for Americans,* as the Department also proposed on that date. The proposal which follows implements the requirement for a food-based menu systems planning alternative. To ensure compliance with the requirements of the Dietary Guidelines, this proposal expands the monitoring procedures in the earlier proposal to provide a system appropriate for monitoring meals served by school food authorities that choose the food-based menu systems approach.

DATES: To be assured of consideration, comments must be postmarked or transmitted on or before March 13, 1995.

ADDRESSES: Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302. Comments may be sent via E-mail to: healthykids@esusda.gov. If comments are sent electronically, commenters should designate ''receipt requested'' to be notified by E-mail that the message has been received by USDA.

FOR FURTHER INFORMATION CONTACT: Robert M. Eadie at the above address or by telephone at 703–305–2620.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). The Administrator of the Food and Consumer Service (FCS) has certified that this rule will not have a significant economic impact on a substantial number of small entities because of the variety of options available to schools to comply with the proposed requirements. The impacts of specific provisions have been considered by the Department as part of the required Regulatory Assessment. Interested parties should refer to this document which is published at the end of this proposal.

Catalog of Federal Assistance

The National School Lunch Program and the School Breakfast Program are listed in the Catalog of Federal Domestic Assistance under Nos. 10.555 and 10.553, respectively, and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V and final rule-related notice at 48 FR 29112, June 24, 1983.)

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This proposed rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This proposed rule is not intended to have retroactive effect unless so specified in the *Effective Date* section of this preamble. Prior to any judicial challenge to the provisions of this proposed rule or the application of the provisions, all applicable administrative procedures must be exhausted. In the National School Lunch Program and School Breakfast Program, the administrative procedures are set forth under the following regulations: (1) school food authority appeals of State agency findings as a result of an administrative review must follow State agency hearing procedures as established pursuant to 7 CFR 210.18(q); (2) school food authority appeals of FCS findings as a result of an administrative review must follow FCS hearing procedures as established pursuant to 7 CFR 210.30(d)(3); and (3) State agency appeals of State Administrative Expense fund sanctions (7 CFR 235.11(b)) must follow the FCS Administrative Review Process as established pursuant to 7 CFR 235.11(f).

Information Collection

This proposed rule contains no new information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

Background

Section 106(b) of Pub. L. 103–448, the Healthy Meals for Healthy Americans Act of 1994, signed into law on November 2, 1994, amended section 9 of the National School Lunch Act (NSLA), 42 U.S.C. 1758(b)(2)(C), to require meals that are served under the National School Lunch Program (NSLP) and School Breakfast Program (SBP) meet the *Dietary Guidelines for Americans* by July 1, 1996, unless the State agency grants a waiver under criteria established by the State agency. Section 106(b) provides that a State agency waiver cannot delay compliance with the Dietary Guidelines beyond July 1, 1998. Further, section 112(c) of Pub. L. 103–448 amended section 12(k) of the NSLA, 42 U.S.C. 1760(k), to require that the Department develop ''food-based'' systems for school food authorities to follow when planning and preparing meals. Food-based menu planning systems would provide local food services with a third option, supplementing the Nutrient Standard Menu Planning (NuMenus) and Assisted Nutrient Standard Menu Planning (Assisted NuMenus) systems originally included in the Department's June 10, 1994, proposal. This proposed rulemaking would implement these statutory provisions. Other provisions of Pub. L. 103–448 will be incorporated into later rulemakings, as appropriate. One such provision requires disclosure of information about the nutritional content of school meals and the consistency of the meals with the Dietary Guidelines. The Department will consider a number of options for implementing this provision. Of paramount concern is the development of an approach that provides flexibility and alternatives for school food authorities. In addition, the Department wants to ensure that any recordkeeping or reporting requirements that are associated with the requirement for nutrition disclosure are kept to a minimum.

Current Provisions

The NSLP was designed in 1946 to offer meals that provide foods which, over time, are sufficient to approximate

one-third of the National Academy of Sciences' Recommended Dietary Allowances (RDA) for key nutrients needed for growth and development for the 10–12 year old child. Historically, the Department has attempted to achieve this goal by requiring that school lunches contain minimum amounts of the following specific components: meat/meat alternate, breads/bread alternates, two different vegetables/fruits and fluid milk. The pattern for the SBP has the goal of providing 25 percent of the RDA and requires minimum quantities of the following components: two servings of any combination of meat/meat alternate or breads/bread alternates, one serving of fruits or vegetables and fluid milk.

Proposed Updating of the Nutrition Standards

Overall, these meal patterns succeed in providing adequate levels of key nutrients. However, they were never updated to reflect the broad array of scientific data documenting that excesses in consumption are a major concern because of their relationship to the incidence of chronic disease. Consequently, school lunches typically fail to comply with the *Dietary Guidelines for Americans,* published jointly by the Department of Agriculture and the Department of Health and Human Services. In particular, school lunches fail to meet the Dietary Guidelines recommended limits on percent of calories from fat (30%) and saturated fat (10%).

To address these deficiencies, the Department issued a proposed regulation on June 10, 1994, updating the nutrition standards of the NSLP and SBP and requiring that school meals comply with the recommendations of the Dietary Guidelines no later than July 1, 1998. Recognizing that the meal pattern did not provide sufficient flexibility to enable a school food service to comply with these requirements, that proposal also proposed to replace the current meal patterns with NuMenus and Assisted NuMenus so that meals could be evaluated and adjusted routinely through use of nutrition analysis. Finally, realizing the need for oversight and technical assistance, the Department proposed an appropriate system for State agency monitoring of school food authority compliance with the nutrition standards.

The Department received over 14,000 comment letters in response to the June 10, 1994, rulemaking. Over 5,000 commenters, primarily from persons in the school food service community, recommended that a meal pattern be retained and that it be designed to meet the requirements of the Dietary Guidelines. A number of commenters recommended systems currently in use in their areas, such as the Minnesota Lunch Power program or the California SHAPE program. Many commenters indicated that development of a new meal pattern based on the Dietary Guidelines would result in speedier implementation of the updated nutrition standards because meal planners were familiar with the meal pattern concept.

On November 2, 1994, Pub. L. 103–448, the Healthy Meals for Healthy Americans Act of 1994, was signed into law. This law had no provisions that would require changes to the June 10, 1994, proposal other than to mandate implementation of the Dietary Guidelines two years earlier than had been proposed and to require that food-based menu planning systems be permitted as means to try to conform meals to the Dietary Guidelines. The proposed provisions involving NuMenus and Assisted NuMenus as well as the proposed nutrition standards for school meals, including compliance with the applicable Dietary Guidelines, were not affected. The Department considers, therefore, that the June 10, 1994, proposal is consistent with Congressional intent on the issues addressed in that rule.

The Department wishes to call attention to the fact that certain provisions included in the June 10, 1994, proposal will be discussed in this preamble to facilitate public review and comment on food-based menu systems within the overall context of the Department's School Meals Initiative for Healthy Children. These provisions such as NuMenus and Assisted NuMenus are not, however, being reproposed, and the Department will not consider additional comments on any provisions of the June 10, 1994, proposed rule. The Department will issue a final rule incorporating provisions from that proposal and this one, and at that time the Department will address the comments received on both proposals.

Meeting the Dietary Guidelines, RDA and Energy Levels

As originally proposed by the Department and now required by section 9(f)(2)(C) of the NSLA, *all* reimbursable school meals, regardless of the method used to plan those meals, will be required to meet the applicable recommendations of the Dietary Guidelines including the quantified standards established for fat and saturated fat over the course of a school week.

To summarize the earlier proposals, located at 59 FR 30234–37, school food authorities would be required to make an effort to reduce sodium and cholesterol, increase dietary fiber, and serve a variety of foods. However, the Department did not propose specific levels for these components, since numeric targets are not established by the current Dietary Guidelines. Nevertheless, progress in these areas is expected and would be assessed. The RDA for the following nutrients were proposed at minimum levels: protein, vitamin A, vitamin C, iron, and calcium as well as the recommended energy intake for the specific age/grade. It was also proposed that energy levels (calories) would be established to provide, over the school week, an average of one-third of the RDA for the NSLP and one-fourth for the SBP and the maximum levels of calories from fat and saturated fat would be limited to 30 percent and 10 percent of calories, respectively.

Food-Based Menu Systems

In developing the proposed food-based menu planning systems, the Department retained the structure of the current meal patterns for the NSLP and SBP in terms of components. However, the Department could not retain the current *quantity* requirements, because they are inadequate to meet the goal of compliance with the Dietary Guidelines. Consequently, portion sizes for some components have been realigned to place greater emphasis on providing vegetables/fruits and grains. In addition, the ways grains/breads products may contribute to the reimbursable meal would be expanded.

The Department has revised the current meal pattern to better reflect the recommendations of the Dietary Guidelines. However, in the absence of ongoing nutrient analysis, there can be no absolute assurance that simple adherence to a meal pattern will result in meals that comply with these nutrition standards. Because of the vast differences in the nutrient value of various food items, especially given different cooking methods, meal planners must keep in mind the need to modify menus, recipes, product specifications, and preparation techniques. However, the Department recognizes that there may be some meal planning approaches that are designed to reflect the recommendations of the Dietary Guidelines. As discussed later in this preamble, the Department may allow such meal planning approaches as one way of demonstrating compliance with the applicable Dietary Guidelines and proposed nutrition standards

without requiring the State agency to conduct nutrient analysis as part of its oversight responsibilities.

In designing the proposed changes, the Department employed a method that is consistent with that used to develop previous meal patterns and other food guides. Nutrient profiles were developed for each of the four food components. Then, using food consumption data from the School Nutrition Dietary Assessment (SNDA) Study (released in October, 1993), the Department estimated the type and frequency of foods consumed from each of the food components. With this information, the Department arrived at composites of estimated nutrient and caloric contributions of each component and calculated revised quantities for each component to achieve compliance with the nutrition standards for each age/grade group. (These groupings are discussed later in this preamble.)

For developmental purposes, the nutrient profiles for each meal component were calculated based on their lowest fat forms and on the assumption that they contained no added sugars. The profiles also maintained the approximate proportions of the main ingredients which, according to SNDA, were used to satisfy each component. For example, in the meat/meat alternate component, the approximate relative proportions of meat, eggs, beans, and cheese were maintained. After establishing that the vitamin, mineral and protein needs were met for each age/grade grouping, the Department determined the calorie levels of each food component and calculated the difference between these levels and the calorie needs of each age/grade group.

Data from SNDA demonstrates that typical school meals already substantially exceed the target for protein. There would be little benefit, therefore, to raising calorie levels by increasing the size of the meat/meat alternate or milk components. Instead, the additional calories needed to make up the difference between the calorie levels of the lowest-fat versions of the meal components and the required calorie levels should come from carbohydrates and by using meat/meat alternate and milk that are somewhat higher in fat than the low-fat products used in the model. Moreover, the Department's analysis shows that nutrition standards can be met while using a variety of items within each component while still remaining within the Dietary Guidelines' recommendations for limiting calories from total fat to 30 percent and to 10 percent for saturated fat and attaining the RDA for specific nutrients.

For many schools, supplying one-third of the recommended energy allowance (calories) through lunches that provide no more than 30 percent of calories from total fat and 10 percent from saturated fat will require replacement of calories from fat with calories from other sources. Fat yields nine calories of food energy per gram, more than twice the food energy per gram provided by carbohydrates and protein, which each yield four calories per gram. The Menu Modification Demonstration Projects, conducted by the Department in 1990–92, showed that a common shortcoming in efforts to provide meals with a lower percent of calories from fat is the failure to maintain total calories (Fox and St. Pierre, 1993). In this demonstration project, where Federal technical assistance was minimal, three of the four NSLP demonstration sites substantially reduced total fat, but did not replace the lost calories. As a result, they failed to achieve their target goals for percent of calories from fat for the NSLP meal, and they fell short of providing one-third of the RDA for food energy. It is therefore appropriate for food-based menu systems to include increased servings for food components which can provide additional calories from sources other than fat while calories from fat are being reduced. (REFERENCE: Fox, M.K., and R. St. Pierre (1993). Menu Modification Demonstration Grants: Evaluation Results, Volume 1: Summary. Prepared by Abt Associates, Inc, under contract to the Department of Agriculture, Food and Nutrition Service.)

Age/Grade Groups for Nutrition Standards

The Department proposes to use age/grade groupings of kindergarten through grade 6 and grades 7 through 12 with an optional grouping for kindergarten through grade 3. The two required groups are designed to reflect the grade structures of the majority of schools. But, as some schools enroll children in kindergarten through grade 3, an optional standard is also proposed.

Establishing separate standards and meal patterns for younger versus older children recognizes the need to provide adequate energy and nutrients for growth based on their particular needs. Growth and maturation changes in adolescents require higher nutrient and energy levels than those for younger children. Nutrient and calorie levels designed for younger children are inappropriate for adolescents, as they fail to provide sufficient energy for adolescents, especially for boys, as well as sufficient iron for adolescent females. A single nutrient standard that meets the needs of the adolescent will provide too many calories and too much fat for the younger child promoting either plate waste or excessive intake. In developing the calorie levels, the Department was also mindful of the need to *balance* the reduction in energy from calories from fat and saturated fat as advised by the Dietary Guidelines, with the need to maintain energy levels overall. Energy lost from reduced fat meals must be replaced by energy from carbohydrates.

To establish these levels, a table entitled ''Calorie and Nutrient Levels for School Lunch'' would be included at § 210.10(c)(2) and one entitled ''Calorie and Nutrient Levels for School Breakfast'' in § 220.8(a)(2). As discussed further, tables for the minimum quantities of the required food components are also proposed.

Changes to the NSLP Meal Components

The following are the specific changes the Department is proposing to the current meal pattern components. The Department wishes to emphasize that the principal differences between the proposed meal patterns and the current patterns reflect increases in the quantities of vegetables/fruits and breads/grains products. The Department is proposing no reductions to the current minimum quantity requirements for any components.

Meat/Meat Alternate Component

The Department is not proposing to change the minimum amounts of this component required for children in any age group. Nor are any changes being made to what constitutes the meat/meat alternate component. However, consistent with the Food Guide Pyramid, guidance materials issued by the Department in support of food-based menu planning systems will emphasize lower fat meat/meat alternates.

Vegetables/Fruits

The Department is proposing to increase the amount of fruits and vegetables made available over the course of a week. The Dietary Guidelines and the Department's Food Pyramid recommend a diet with a variety of vegetables, fruits and grain products. Moreover, the Department recognizes that fiber levels should be increased and calories from non-protein sources must be provided to replace those lost from the reduction in fat. The Department is proposing that the minimum servings for the vegetables/fruits component would be three-fourths of a cup (currently one-half cup for

children in kindergarten through grade 3 and three-fourths cup for grades 4–12) per lunch *plus* an additional one-half cup served *over a five-day period* for children in kindergarten through grade 6. Allowing a five-day period to serve the additional one-half cup provides schools with flexibility in meal planning. Because older children have greater need for calories and other nutrients, the proposed rule would increase the minimum serving for vegetables/fruits for children in grades 7 through 12 from three-fourths of a cup per day to one cup *per day*. No changes are being proposed, however, for the portion sizes for very young and preschool children nor are changes made to what constitutes this component. The Department is proposing to revise the chart, ''Minimum Quantities'' in § 210.10(c) as well as the additional discussion about this component in § 210.10(d)(3) to reflect the enhanced portion sizes.

Grains/Breads

As with the fruits/vegetables component, the Department is proposing a significant increase in the amount of grains/breads made available during a school week. Both the Dietary Guidelines and the Department's Food Pyramid place emphasis on the consumption of grains. In keeping with the use of the term ''grains'' in the Dietary Guidelines, this proposal would amend the chart, ''Minimum Quantities'' in § 210.10(c) and the additional discussion about this component in § 210.10(d)(4) to rename the component currently titled ''Bread/Bread Alternate.'' The new title would be ''Grains/Breads.'' In addition, the Department is proposing an increase in the number of servings of grains and breads for school children to augment dietary fiber and to provide an additional low-fat source of calories to balance the loss of calories from fat. Again, it should be noted that the servings for very young and preschool children have not been changed. However, for children in kindergarten through grade 6, the number of servings *per week* of grains and breads would be increased from 8 to 12. For children in grades 7 through 12, the number of servings would be increased from 10 to 15 servings *per week*. The Department is also proposing to revise § 210.10(d)(4)(ii) to permit one serving *per day* of grains/breads in the form of a dessert. This proposed change is designed to provide flexibility to assist menu planners in meeting energy needs.

Current guidance (FNS Instruction 783–12), issued in 1983, established the requirements and the minimum weights for the current breads/bread alternates component. The Department plans to reissue this Instruction when final regulations are published to revise the criteria for determining acceptable grains/breads products so that some additional items may be credited to this group. However, no changes are being made in the regulations regarding what constitutes this component.

Milk

As with the meat/meat alternate component, this proposal does not change the current minimum serving sizes for fluid milk for any of the age/grade groups. Readers should note that section 107 of Pub. L. 103–448 included a provision modifying the requirement that fluid whole milk and fluid unflavored low-fat milk be offered as part of all reimbursable lunches. The new statutory milk requirement at section 9(a)(2) of the NSLA, 42 USC 1758(a)(2), will be addressed in a separate rulemaking.

School Lunch Component Chart

To reflect these proposed changes to the school lunch pattern, the proposed rule would make a number of revisions to the table entitled ''School Lunch Pattern-Per Lunch Minimums'' in § 210.10(c). First, the title of the chart would be renamed ''Minimum Quantities,'' since some of the quantity requirements are cumulative over the course of the school week. Secondly, the age/grade groups are the same as discussed above for the nutrition standards, except that the minimum portions for children ages one to two who may participate are included for easy reference. (Readers should note that these minimums are the same as those now in use.) Furthermore, school-age children have been separated into two groups: (a) kindergarten through grade 6 and (b) grades 7 through 12. School food authorities also have the option of using alternate portion sizes established for children in kindergarten through grade 3. Readers should note, however, that the current recommendation to provide children in grades 7 through 12 with three ounces of meat/meat alternate would be deleted. This revision is intended to ensure that the chart reflects only the proposed regulatory revisions. It has no effect on the minimum portions that schools must offer. In addition, the chart has been revised to incorporate the proposed increases in the minimum portions of fruits and vegetables and the number of servings of grains/breads.

Changes to the School Breakfast Program

In the June 10, 1994, rulemaking, the Department also proposed to amend the nutrition requirements for the SBP. As under the NSLP, the SBP would be required to comply with the Dietary Guidelines and with the RDA and calories levels adjusted appropriately. Breakfasts would be required to meet one-fourth of the RDA (consistent with the current design of the breakfast meal pattern) and would have to provide fewer calories than lunches. The current age/grade group for breakfast is retained because of its familiarity. Again, only the chart reflecting the RDA and calorie levels for the SBP is proposed herein. The chart ''Calorie and Nutrient Levels for School Breakfasts'' is contained in § 220.8(a)(2).

Changes to the SBP Meal Components

As with the proposed school lunch pattern, the Department is not proposing to reduce the portion size for any of the components of school breakfasts. The following are the specific changes the Department is proposing to the current meal pattern components for school breakfasts:

Meat/Meat Alternate or Grains/Breads (the New Name for Bread/Bread Alternate)

The current requirement for two servings of meat/meat alternate or two servings of grains/breads or one serving of each remains the same. However, school food authorities are encouraged to offer children in grades 7 through 12 an additional serving of the grains/breads component per day. This optional increase in the number of servings is intended to provide sufficient calories to meet the needs of the adolescent child, especially adolescent males, when the fat content of the breakfast is modified to be consistent with the Dietary Guidelines. To this end, the Department emphasizes that meeting the nutrient requirements of the grades 7 through 12 with the single pattern for kindergarten through grade 12 will be difficult. It is important that school food authorities recognize this and make an effort to offer high calorie, nutrient dense foods in the breakfast menu.

Vegetables/Fruits

There are no proposed changes in the minimum portions currently required for children in any age group.

Milk

There are no proposed changes in the requirements for the amount of fluid

milk that is served either as a beverage or on cereal.

School Breakfast Component Chart

The table entitled ''School Breakfast Pattern-Per Breakfast Minimums'' currently in § 220.8(a) would be amended to reflect the above proposed revisions. As with the NSLP, no changes are being proposed to the minimum quantities for infants and young children and the title has been changed to ''Minimum Quantities'' to be consistent with the corresponding chart for the NSLP.

Compliance Monitoring

The Department proposes to monitor compliance with the nutritional standards of the food-based menu systems in a manner consistent with the compliance process proposed for NuMenus, Assisted NuMenus and with the current regulations. Compliance with meal components and quantities on a per-meal basis for the food-based menu systems remain unchanged. The requirements in § 210.18(g)(2) for Performance Standard 2 under the administrative review system would continue to apply to those review elements; i.e., on the day of a review, the lunch service must be observed to ensure that all required meal components are offered and that children accept the minimum number of items stipulated both under the standard meal service and the offer versus serve option.

The requirement that program meals meet all nutrition standards, including the Dietary Guidelines, necessitates an additional review methodology for State agencies. While the compliance method for NuMenus and Assisted NuMenus was addressed in the June 10, 1994, rulemaking, this proposal addresses how this same basic compliance method would apply to food-based menu systems. Since, by law, these schools may not be required to conduct their own nutrient analysis, State agencies will not have nutrient analysis records to review to verify that the meals offered actually met the nutrition standards. Therefore, the Department is proposing to amend § 210.19, General Areas, to require that State agencies conduct a nutrient analysis of one week's meals using the school's production records.

This proposal would also authorize the Department to approve alternative methodologies proposed by the States if they provide the same degree of assurance that school meals are in compliance with all nutrition standards. The proposed provision on monitoring is consistent with a statement from the Committees' Analysis accompanying S. 1614 that ''. . . nutrient analysis may be used by schools, State agencies or the Secretary as part of audit and compliance activities.''

In order to provide maximum flexibility for States to use an alternative methodology to nutrient analysis as part of an administrative review, the Department will review any approaches proposed by State agencies or by school food authorities with the approval of their State agency to meet both the applicable Dietary Guidelines and the standards for calories and nutrients as detailed in the June 10, 1995, proposed rule at 59 FR 30234–5 and 59 FR 30239–40, for the NSLP and SBP, respectively. If the school food authority has used an approved alternative to the food-based menu systems option and has precisely followed it to meet the Dietary Guidelines and nutrition standards, the State agency would not be required to conduct a separate nutrient analysis.

The Department solicits comments on alternative methodologies that would support the production of meals that adhere to the Dietary Guidelines. The Department is particularly interested in methodologies that are easily implemented and could be shared with other States and is prepared to facilitate the sharing of information on such methodologies among States and school food authorities.

As part of its on-going efforts to implement the Dietary Guidelines, the Department has been in contact with State agencies to determine their training and technical assistance needs. As a result of information obtained from State agencies, a plan is being developed to provide a variety of resources in the areas of training modules and materials, recipes, product specifications, menu planning guides, videos and workshops in ways that are compatible with existing State training procedures. In addition, the Department will be soliciting applications for grants totalling approximately $4,400,000 to fund State-level activities. The Department is again requesting State and local administrators to comment on what types of training and technical assistance are needed to best implement this proposed rule.

Compliance reviews would be conducted on the meals *offered* by the school food authority and/or the schools selected for review, depending on the level at which menus are planned and meals provided. For example, if a school food authority provides meals from satellite kitchens to schools, the State agency would use information from the production records at those kitchens to prepare the nutrient analysis. However, if an individual school with its own menu planning and food production was selected for review, the State agency would use production records from that school's kitchen for nutrient analysis.

The State agency's nutrient analysis would be conducted using the same requirements and methodology employed by school food authorities choosing to use NuMenus or Assisted NuMenus. The Department proposed criteria for menu analysis in the June 10, 1994 proposed rule and is currently considering comments on those provisions for future adoption as a final rule.

The Department also recognizes that some schools or school food authorities may choose to use food-based menu systems *and* to conduct their own nutrient analysis. In these situations, the State agency may employ the analysis prepared by the local entity in lieu of conducting a separate nutrient analysis, provided that the nutrition analysis is done in accordance with the Department's criteria.

Using the Results of Nutrient Analysis To Measure Compliance

The results of the nutrient analysis from each production source would be used to determine compliance with the Dietary Guidelines' recommendation for limiting the calories from fat and saturated fat as well as the calories and the nutrient levels for the age/grade groups. In addition, the levels of sodium, cholesterol and dietary fiber would also be determined. These figures would be used for future reviews to determine if the school food authority had progressed toward meeting the nutrition standards.

School food authorities found to be out of compliance with the nutrition standards would be required to initiate corrective action. This requirement is consistent with what was proposed for implementation of NuMenus and Assisted NuMenus in the June 10, 1994, proposed regulation. School food authorities would be required to develop an acceptable corrective action plan in collaboration with the State agency. For school food authorities making good faith efforts to comply with the terms of the corrective action plan, the State agency would provide technical assistance and training to help them meet the nutrition standards and Dietary Guidelines. However, consistent with the June 10, 1994, proposal, if the school food authority has not been acting in good faith to meet the terms of the corrective action plan and refuses to renegotiate the plan, the State agency shall determine if a disallowance of reimbursement funds is warranted.

Miscellaneous Revisions

School Week

Sections 106(b) and 201(a) of Pub. L. 103–448 mandate that the nutritional requirements for school meals be based on a weekly average. The use of a weekly average was proposed by the Department on June 10, 1994 to establish a time frame for analyzing nutrients under NuMenus and Assisted NuMenus. The Department is proposing to add a more general definition of ''School week'' to § 210.2 and to § 220.2 to clarify the appropriate time period for determining compliance with the required nutrition standards. As proposed here, ''School week'' would be a minimum of three days and a maximum of seven days, and the days would be consecutive.

Food Component, Food Item

The definitions in § 210.2 of ''Food component'' and ''Food Item'' would be revised to reflect the new title of the grains/breads component that would replace the current title of bread/bread alternate. The Department would also like to note that no changes are being proposed to the number of items that comprise a reimbursable meal. Five items will continue to be required for a reimbursable lunch, and under the offer versus serve option, three of the five items must be taken.

Lunch

The definition of ''Lunch'' in § 210.2 would be revised to incorporate a reference to the nutrition standards as part of the elements that reimbursable meals must meet. Readers should note that this proposal repeats the definition of ''Lunch under NuMenus and Assisted NuMenus'' and under the current meal pattern, as proposed in the June 10, 1994, rulemaking. The Department is repeating this provision in order to provide readers with a complete definition of ''Lunch'' under all meal planning systems. However, since the Department has already received comments on the earlier definition, the Department will not accept additional comments on the definition of lunch under NuMenus and Assisted NuMenus.

Milk Component

In § 210.10(d)(1) there is a special exemption for schools that, prior to May 1, 1980, served six fluid ounces instead of the currently required eight fluid ounces to children ages 5–8 in grades kindergarten through grade 3. This proposal would remove this obsolete reference.

Effective Dates

Section 106(b)(2) of Pub. L. 103–448 requires that schools implement the Dietary Guidelines by July 1, 1996, unless a State agency grants a waiver to postpone implementation. Waivers may delay implementation to no later than July 1, 1998.

The statute also permits the Secretary to establish a date for implementation later than July 1, 1998. The Department does not presently envision extending this deadline because of the need to begin compliance with the Dietary Guidelines in an expeditious manner.

In addition, section 112(c)(3) of Pub. L. 103–448, 42 U.S.C. 1760(k)(3), requires the Department to issue a final regulation on this subject by June 1, 1995, incorporating the results of this proposed rulemaking as well as those concerning NuMenus and Assisted NuMenus that were proposed in the June 10, 1994, rule. Further, the Department, in compliance with section 112(c)(2) of Pub. L. 103–448, 42 USC 1760(k)(2), will be issuing a notice in the Federal Register to announce a public meeting to discuss this proposed action. This meeting will be held within 45 days of publication of this rulemaking and will be open to all interested parties and organizations. The Department encourages persons reviewing this proposed rule to watch for the Federal Register announcement of the public meeting.

While compliance with the updated nutrition standards is not required until July 1, 1996 (or later if waived by the State agency), school food authorities are encouraged to work towards meeting the Dietary Guidelines as well as the appropriate levels of nutrients and calories as soon as *feasible.*

List of Subjects

7 CFR Part 210

Children, Commodity School Program, Food assistance programs, Grants programs-social programs, National School Lunch Program, Nutrition, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 220

Children, Food assistance programs, Grant programs—social programs, Nutrition, Reporting and recordkeeping requirements, School Breakfast Program.

Accordingly, 7 CFR Parts 210 and 220 are proposed to amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for 7 CFR part 210 is revised to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

2. In § 210.2:

a. the definition of ''*Food component*'' is revised;

b. the definition of ''*Food item*'' is revised;

c. the definition of ''*Lunch*'' is revised; and

d. a new definition of ''*School week*'' is added in alphabetical order. The revisions and addition read as follows:

§ 210.2 Definitions.

* * * * *

Food component means one of the four food groups which compose the reimbursable school lunch, i.e., meat or meat alternate, milk, grains/breads and vegetables/fruits.

Food item means one of the five required foods that compose the reimbursable school lunch, i.e., meat or meat alternate, milk, grains/breads, and two (2) servings of vegetables, fruits, or a combination of both.

* * * * *

Lunch means a meal which meets the nutrient and calorie levels designated in § 210.10(c) and, if applicable, the school lunch pattern for specified age/grade groups as designated in § 210.10.

* * * * *

School week means the period of time used as the basis for determining compliance with the *1990 Dietary Guidelines for Americans* and the calorie and nutrient levels in § 210.10(c)(2). The period shall be a minimum of three consecutive days and a maximum of consecutive seven days. Weeks in which school lunches are offered less than three times shall be combined with either the previous or the coming week.

* * * * *

3. In § 210.10:

a. The section heading is revised;

b. The heading of paragraph (a) is revised;

c. Paragraph (c) is revised;

d. The last two sentences of the concluding text following paragraph (d)(1) are removed;

e. A new sentence is added at the end of paragraph (d)(3);

f. The heading of paragraph (d)(4) is revised; and

g. The second through fifth sentences of paragraph (d)(4)(ii) are removed and one new sentence is added in their place.

The additions and revisions read as follows:

§ 210.10 Nutrition standards for lunches and menu planning methods.

(a) *Definitions for infant meals.* * * *

* * * * *

(c) *Minimum quantities/nutrient levels for food-based menu systems.*

(1) At a minimum, schools shall serve meals in the quantities provided in the following chart:

MINIMUM QUANTITIES

	REQUIRED FOR		OPTION FOR		
	AGES 1–2	PRESCHOOL	GRADES K–6	GRADES 7–12	GRADES K–3
MEAL COMPONENT:					
MILK	6 OUNCES	6 OUNCES	8 OUNCES	8 OUNCES	8 OUNCES.
MEAT OR MEAT ALTERNATE	1 OUNCE	1½ OUNCES	2 OUNCES	2 OUNCES	1½ OUNCES.
FRUITS AND VEGETABLES	½ CUP	½ CUP	¾ CUP PLUS ADDITIONAL ½ CUP OVER A WEEK.	1 CUP	¾ CUP.
GRAINS AND BREADS	l5 SERVINGS PER WEEK—MINIMUM OF ½ PER DAY.[1]	l8 SERVINGS PER WEEK—MINIMUM OF 1 PER DAY.[1]	l12 SERVINGS PER WEEK—MINIMUM OF 1 PER DAY.[1 2]	15 SERVINGS PER WEEK—MINIMUM OF 1 PER DAY.[1 2]	10 SERVINGS PER WEEK-MINIMUM OF 1 PER DAY.[1 2]

[1] FOR THE PURPOSES OF THIS CHART, WEEK EQUALS FIVE DAYS.
[2] UP TO ONE GRAINS/BREADS SERVING PER DAY MAY BE A DESSERT.

(2) At a minimum, schools shall provide the following calorie and nutrient levels over a school week:

CALORIE AND NUTRIENT LEVELS FOR SCHOOL LUNCH

	PRE-SCHOOL	GRADES K–6	GRADES 7–12	GRADES K–3 OPTION
ENERGY ALLOWANCES (CALORIES)	517	664	825	633
TOTAL FAT (AS A PERCENTAGE OF ACTUAL TOTAL FOOD ENERGY)	(1)	(1)	(1)	(1)
TOTAL SATURATED FAT (AS A PERCENTAGE OF ACTUAL TOTAL FOOD ENERGY)	(2)	(2)	(2)	(2)
PROTEIN (g)	7	10	16	9
CALCIUM (mg)	267	286	400	267
IRON (mg)	3.3	3.5	4.5	3.3
VITAMIN A (RE)	150	224	300	200
VITAMIN C (mg)	14	15	18	15

[1] NOT TO EXCEED 30 PERCENT OVER A SCHOOL WEEK.
[2] NOT TO EXCEED 10 PERCENT OVER A SCHOOL WEEK.

(3) School food authorities shall comply with *1990 Dietary Guidelines for Americans* and the provisions in paragraph (c)(2) of this section no later than July 1, 1996 *except that* State agencies may grant waivers to postpone implementation until no later than July 1, 1998. Such waivers shall be granted by the State agency using guidance provided by the Secretary.

(d) *Lunch components.* * * *

(3) *Vegetable or fruit.* * * * For children in kindergarten through grade six, the requirement for this component is based on minimum daily servings and an additional 1/2 cup in any combination over a five day period.

(4) *Grains and breads.* * * *

(ii) * * * The requirement for this component is based on minimum daily servings *plus* total servings over a five day period. * * *

* * * * *

4. In § 210.19, paragraphs (a)(1) through (a)(5) are redesignated as paragraphs (a)(2) through (a)(6) respectively, and a new paragraph (a)(1) is added to read as follows:

§ 210.19 Additional responsibilities.

(a) *General Program management.*

* * *

(1) *Compliance with nutrition standards.* Unless waived in accordance with § 210.10(c)(3), beginning with School Year 1996–97, school food authorities shall comply with the *1990 Dietary Guidelines for Americans* and the calorie and nutrient levels specified in § 210.10(c) for reimbursable meals.

(i) Beginning with School Year 1996–97, State agencies shall evaluate compliance with the established nutrition standards over a school week. At a minimum, these evaluations shall be conducted once every 5 years and may be conducted at the same time a school food authority is scheduled for an administrative review in accordance with § 210.18. State agencies may also conduct these evaluations in conjunction with technical assistance visits, other reviews, or separately. Except as provided in this paragraph (a)(1)(i), the State agency shall conduct nutrient analysis on the menu(s) served during the review period to determine if the *1990 Dietary Guidelines for Americans* and the calorie and nutrient levels specified in § 210.10(c)(2) and § 220.8(a)(2) of this chapter were met. However, the State agency may:

(A) Use the nutrient analysis of any school or school food authority that offers meals using the food-based menu systems approaches provided in § 210.10(c) and/or § 220.8(b) of this chapter and that conducts its own nutrient analysis under criteria established by USDA of those meals; or

(B) Develop its own method for compliance review, subject to USDA approval.

(ii) if the menu for the school week fails to comply with the *1990 Dietary Guidelines for Americans* and/or to meet the calorie and nutrient levels specified in § 210.10(c)(2) and/or § 220.8(a)(2) of this chapter, the school food authority shall develop, with the assistance and concurrence of the State agency, a corrective action plan designed to rectify those deficiencies. The State agency shall monitor the school food authority's execution of the plan to ensure that the terms of the corrective action plan are met.

(iii) If a school food authority failed to meet the terms of the corrective action plan, the State agency shall determine if the school food authority is working towards compliance in good faith and, if so, may renegotiate the corrective action plan, if warranted. However, if the school food authority has not been acting in good faith to meet the terms of the corrective action plan and refuses to renegotiate the plan, the State agency shall determine if a disallowance of reimbursement funds as authorized under paragraph (c) of this section is warranted.

* * * * *

PART 220—SCHOOL BREAKFAST PROGRAM

1. The authority citation for 7 CFR part 220 is revised to read as follows:

Authority: 42 U.S.C. 1773, 1779.

2. In § 220.2, a new paragraph (w–1) is added to read as follows:

§ 220.2 Definitions.

* * * * *

(w–1) *School week* means the period of time used as the basis for determining compliance with the *1990 Dietary Guidelines for Americans* and the calorie and nutrient levels in § 220.8(a)(2). The period shall be a minimum of three consecutive days and a maximum of seven consecutive days. Weeks in which school breakfasts are offered less than three times shall be combined with either the previous or the coming week.

* * * * *

3. In § 220.8, the section heading and paragraph (a) are revised to read as follows:

§ 220.8 Nutrition standards for school breakfasts and menu planning methods.

(a) *Minimum quantities/nutrient levels for food-based menu systems.*

(1) At a minimum, schools shall serve meals in the quantities provided in the following chart:

MINIMUM QUANTITIES

	REQUIRED FOR			OPTION FOR
	AGES 1–2	PRESCHOOL	GRADES K–12	GRADES 7–12
MEAL COMPONENT:				
MILK (FLUID)[1]	1½ CUP	¾ CUP	8 OUNCES	8 OUNCES.
MEAT OR MEAT ALTERNATE.	½ OUNCE PLUS	½ OUNCE PLUS	1 OUNCE PLUS	2 OUNCES PLUS
GRAINS/BREADS.	½ SERVING EACH OF GRAINS/BREADS AND MEAT/MEAT ALTERNATE (½ OUNCE) OR. 2 GRAINS/BREADS OR 2 MEAT/MEAT ALTERNATE (1 OUNCE).	½ SERVING EACH OF GRAINS/BREADS AND MEAT/MEAT ALTERNATE(½ OUNCE) OR. 2 GRAINS/BREADS OR 2 MEAT/MEAT ALTERNATE (1 OUNCE).	ONE SERVING EACH OF GRAINS/BREADS AND MEAT/MEAT ALTERNATE (1 OUNCE) OR. 2 GRAINS/BREADS OR 2 MEAT/MEAT ALTERNATE (2 OUNCES).	ONE SERVING EACH OF GRAINS/BREADS AND MEAT/MEAT ALTERNATE (2 OUNCES) OR 2 GRAINS/BREADS OR 2 MEAT/MEAT ALTERNATE (4 OUNCES) PLUS ADDITIONAL 1 OUNCE PER DAY OF GRAINS/BREADS.
VEGETABLES/FRUITS[2].	¼ CUP	½ CUP	½ CUP	½ CUP.

[1] A SERVING OF FLUID MILK SERVED AS A BEVERAGE OR ON CEREAL OR USED IN PART FOR EACH PURPOSE.
[2] A SERVING OF FRUITS OR VEGETABLES OR BOTH, OR FULL-STRENGTH FRUIT OR VEGETABLE JUICE.

(2) At a minimum, schools shall provide the following calorie and nutrient levels over a school week:

CALORIE AND NUTRIENT LEVELS FOR SCHOOL BREAKFAST

	PRE-SCHOOL	GRADES K–12	OPTION FOR GRADES 7–12
ENERGY ALLOWANCES (CALORIES)	388	554	618
TOTAL FAT (AS A PERCENTAGE OF ACTUAL TOTAL FOOD ENERGY)	(1)	(1)	(1)
TOTAL SATURATED FAT (AS A PERCENTAGE OF ACTUAL TOTAL FOOD ENERGY)	(2)	(2)	(2)
PROTEIN (g)	5	10	12
CALCIUM (mg)	200	257	300
IRON (mg)	2.5	3.0	3.4
VITAMIN A (RE)	113	197	225
VITAMIN C (mg)	11	13	14

[1] NOT TO EXCEED 30 PERCENT OVER A SCHOOL WEEK.

[2] NOT TO EXCEED 10 PERCENT OVER A SCHOOL WEEK.

(3) School food authorities shall comply with *1990 Dietary Guidelines for Americans* and the provisions in paragraph (c)(2) of this section at the same time such provisions are implemented for the National School Lunch Program in accordance with § 210.10 (c)(3) of this chapter.

* * * * *

4. In § 220.13, paragraphs (f)(3) and (f)(4) are redesignated as paragraphs (f)(4) and (f)(5), respectively and a new paragraph (f)(3) is added to read as follows:

§ 220.13 Special responsibilities of State agencies.

* * * * *

(f) * * *

(3) For the purposes of compliance with the *1990 Dietary Guidelines for Americans* and the calorie and nutrient levels specified in § 220.8(a)(2), the State agency shall follow the provisions specified in § 210.19(a)(1) of this chapter.

* * * * *

Dated: January 18, 1995.

Ellen Haas

Under Secretary for Food, Nutrition, and Consumer Services

Appendix A—Regulatory Cost/Benefit Assessment: Food-Based Menu Systems

1. *Title*: National School Lunch and School Breakfast Program: Food-Based Menu Systems.

2. *Background*: The proposed rule for food-based menu systems is an extension of the proposed rule on Nutrition Objectives for School Meals which was published in the June 10, 1994 Federal Register at 59 FR 30218 (USDA Food and Nutrition Service, 1994).

This cost/benefit assessment extends the cost/benefit assessment which was developed for the proposed rule on Nutrition Objectives for School Meals to encompass the proposed food-based menu systems. That analysis was published in the Federal Register along with the rule.

The Healthy Meals for Healthy Americans Act of 1994, P.L. 103–448, November 2, 1994, requires USDA to provide within the National School Lunch and School Breakfast Programs an option for planning meals using a food-based system. This proposed rule amends the current meal patter requirements and defines the food components and the minimum quantities for each component for various ages or grade levels. It also defines the nutrient requirements for school meals for each of the age or grade levels, using levels derived from the most recent (1989) *Recommended Dietary Allowances* (RDAs) published by the National Research Council and from the quantitative recommendations for the maximum levels of fat and saturated fat as a percent of calories contained in the most recent (1990) USDA/DHHS *Dietary Guidelines for Americans*. These changes would be implemented by July 1, 1996 as required by law.

3. *Statutory Authority*: National School Lunch Act (42 U.S.C. 1751–1760, 1779) and Child Nutrition Act of 1966 (42 U.S.C. 1773, 1779).

4. *Cost/Benefit Assessment of Economic and Other Effects*:

Synopsis

This assessment finds that the proposed food-based menu system requirements can be met within current food costs and with market impacts at levels presented for the Nutrient Standard Menu Planning system proposed in the June 10, 1994 Federal Register. Compared to current school food service practice, improvement in food preparation techniques and food selections within food categories would be needed to meet the proposed food-based menu system requirements and RDA/Dietary Guidelines-derived nutrient targets for NSLP. While average food cost need not change, there will be a cost at the state level for establishing and conducting nutrient analysis as a routine component of local reviews. The national total for this cost is estimated to be less than $2 million per year, and is offset by continuation of the previously proposed 20 percent reduction in state monitoring requirements.

a. Costs To Produce a Meal

The cost/benefit analysis accompanying the June 10, 1994 regulatory proposal ''Nutrition Objectives for Healthy School Meals'' determined that by using the Nutrient Standard Menu Planning approach it is possible within the current cost to provide school meals which meet defined nutrient targets derived from RDAs and the Dietary Guidelines for Americans. Since the food-based menu planning system is being proposed as a system which may be used in lieu of Nutrient Standard Menu Planning (NSMP) and Assisted Nutrient Standard Menu Planning, school food authorities will be able to select the planning approach which best fits their needs, including consideration of the cost of planning and providing meals under the various available methods. This document extends the previously published analysis and discussion to cover the food-based menu planning option. Since the proposed meal pattern for the School Breakfast Program retains the existing pattern, this analysis focuses on the lunch meal.

Data

A nationally representative sample included in the School Lunch and Breakfast Cost Study conducted for FNS by Abt Associates found an average food cost of $0.72 for school lunch meals prepared under the current meal pattern, rounded to the nearest whole cent (Abt Associates, 1994). This includes costs for all foods served as part of the National School Lunch Program (NSLP) reimbursable meal and is not limited to the cost of items which are credited towards the current meal pattern requirement, but excludes items offered for sale as a la carte. For example, if a school included a condiment bar and a cookie dessert along with the NSLP meal without an additional charge, the cost of the ingredients in the condiment bar and the cookie dessert were included in the overall average food cost determination, even though these items were not credited towards meeting the meal pattern minimum requirements. Similarly, if a school included in its NSLP meal more than the minimum amount of vegetable and fruit required by the current meal pattern, the cost of the ingredients in the full amount included in the NSLP meal was included in the overall average food cost determination.

Data on actual foods served in the NSLP were obtained from the 1993 USDA School Nutrition Dietary Assessment (SNDA) study conducted by Mathematica Policy Research for FNS (Mathematica Policy Research, 1993). The study included a survey of about 3550 students in grades 1 through 12 in 545 schools throughout the country. The students reported detailed information on the kinds and amounts of foods and beverages they consumed during a 24-hour period. The impact analysis used only the portion of the data on foods served to children as part of credited school lunches. It included plate waste but excluded a la carte items, such as desserts, purchased in addition to the school lunch. The SNDA survey contained detailed information on over 600 food items served in the school

lunch program. These items were aggregated into 52 food groups based on the primary ingredient and the percent of calories from fat. For example, there were two beef categories: high-fat and low-fat beef; two poultry categories; etc.

Food costs were estimated from ingredient cost data obtained in the 1993 School Lunch and Breakfast Cost Study and recipes for school lunch items. The recipes were necessary for two reasons: aggregation of ingredient costs to costs of food served, and for estimating the change in usage of the various agricultural commodities.

The USDA Economic Research Service (ERS) developed a computer model incorporating the above data to assist in estimating the possible range of market impacts from the changes in the June 10, 1994 proposed rule. For the current analysis, this model was extended to reflect the food component crediting used in food-based menu planning. Crediting for each of the 52 food groups towards the four food components of the existing NSLP meal pattern was estimated by FNS using information contained in the ''Food Buying Guide for Child Nutrition Programs.'' This extended model was then used to determine the average NSLP crediting of the NSLP meals included in the SNDA data.

Findings

Table 1 shows in abbreviated form the current meal pattern requirements for NSLP for grades K–12. For consistency with the proposed regulation the current ''Bread or Bread Alternate'' component will be referred to as ''Grains/Breads'' as proposed. This table is accompanied in program guidance with the recommendation that ''portions be adjusted by age/grade group to better meet the food and nutritional needs of children according to their ages * * *. If portions are not adjusted, the Group IV portions are the portions to serve all children.''

TABLE 1.—SCHOOL LUNCH MEAL PATTERNS FOR GRADES K–12 (ABBREVIATED)

Food components	Food items	Minimum quantities		Recommended quantities
		Grades K–3, ages 5–8 (group III)	Grades 4–12, age 9 and over (group IV)	Grades 7–12, age 12 and over (group V)
Meat/Meat Alternate	Lean meat, poultry, or fish, or cheese, or equivalent from eggs, cooked dried beans or peas, peanut butter or other nut or seed butters or certain other alternates.	1.5 oz.	2 oz	3 oz.
Vegetables/Fruits	2 or more servings of vegetables or fruits or both to total	.5 cups	.75 cups	.75 cups.
Grains/Breads	Servings of grains/breads of which a minimum or 1 per day must be enriched or whole-grain.	8 per week	8 per week	10 per week.
Milk (as a beverage)	Fluid whole milk, and fluid unflavored lowfat milk, skim milk, or buttermilk.	8 fl.oz	8 fl.oz	8 fl.oz.

Table 2 shows the findings derived from the School Nutrition Dietary Assessment Study (SNDA) data for each of the four required food components in the units used for the school meal patterns. These SNDA data show that, on average, NSLP meals served for grades K–12 exceed the existing minimum meal pattern requirements for meat/meat alternates; grains/breads; and vegetables/fruits. The average for fluid milk is slightly below the 8 fluid ounce minimum (7.5 fl. oz.), which is expected due to NSLP offer versus serve (OVS) rules. The proposed rule maintains the current meal pattern requirements for offering 8 fluid ounces of milk as a beverage.

TABLE 2.—AVERAGE AMOUNT OF EACH POTENTIALLY CREDITABLE FOOD COMPONENT AS FOUND IN SCHOOL YEAR 1991–92

Food component	Estimated average amount in NSLP meals, school year 1991–92
Meat/Meat Alternate (oz.)	2.8
Vegetables/Fruits (cups)	1.0
Grains/Breads (servings)	2.5
Milk (as a beverage) (oz.)	7.5

Using the extended school meals model, the average cost of each food component was estimated. Under both the existing meal pattern system and the proposed food-based menu system, the oldest age/highest grade group always requires the largest quantity of food from each food component. Tables 3 and 4 compare the SNDA findings on meals served by food component to the largest quantities of the meal pattern requirements currently in place (Table 3) and as proposed (Table 4).

These tables show that within the existing reimbursement structure, schools already provide meals which, on average:

- For Meat/meat alternate, exceed the oldest age/grade minimums of both the current and proposed rules.
- For Vegetables/fruits, exceed the minimum of the current meal pattern for the oldest age/grade group, and are on average equal to the minimum for the oldest age/grade group of the proposed rule.
- For Grains/breads, exceed the minimum of the current meal pattern for the oldest age/grade group, and are on average about 0.5 servings per day less than the minimum for the oldest age/grade group of the proposed rule.

The proposed grains/breads minimum for the largest group of NSLP participants, grades K–6, is 12 servings per week, compared to the proposed 15 servings per week for grades 7–12. When weighted by historical student participation, the overall weighted average proposed minimum for grains/breads is equal to about 2.6 servings per day. Therefore, the current NSLP meals serve only slightly less (0.1 servings per day) than the proposed weighted

average minimum. Grains/breads is the least expensive food component on a per serving basis, averaging 3.2 cents per serving.

In summary, compared to the current meal pattern minimums, the proposed food-based menu system holds milk and meat/meat alternate constant and requires an increase in the minimum grains/breads and vegetables/fruits, but does not require an increase on average over current serving practices except for 0.5 servings of bread per week.

TABLE 3.—DIFFERENCE BETWEEN ACTUAL NSLP FOOD AND THE HIGHEST MINIMUM REQUIREMENTS OF THE CURRENT MEAL PATTERN

Food component	Largest quantity required by current NSLP meal pattern	Estimated average amount in NSLP meals, school year 1991–92	Difference (actual minus required)
Meat/Meat Alternate (oz.).	2.0	2.8	+0.8
Vegetables/Fruits (cups).	.75	1.0	+0.25
Grains/Breads (average servings per day).	1.6	2.5	+0.9
Milk (as a beverage) (oz.).	8.0	7.5	[1] −0.5

[1] Probably not zero due to OVS effect.

TABLE 4.—DIFFERENCE BETWEEN ACTUAL NSLP FOOD AND THE HIGHEST MINIMUM REQUIREMENTS OF THE PROPOSED FOOD-BASED MENU SYSTEM

Food component	Largest quantity required by proposed NSLP food-based menu system	Estimated average amount in NSLP meals, school year 1991–92	Difference (actual minus proposed)
Meat/Meat Alternate (oz.).	2.0	2.8	+0.8
Vegetables/Fruits (cups).	1.0	1.0	no difference

TABLE 4.—DIFFERENCE BETWEEN ACTUAL NSLP FOOD AND THE HIGHEST MINIMUM REQUIREMENTS OF THE PROPOSED FOOD-BASED MENU SYSTEM—Continued

Food component	Largest quantity required by proposed NSLP food-based menu system	Estimated average amount in NSLP meals, school year 1991–92	Difference (actual minus proposed)
Grains/Breads (average servings per day).	3.0	2.5	−0.5
Milk (as a beverage) (oz.).	8.0	7.5	−0.5 [1]

[1] Probably not zero due to OVS effect.

Reanalysis of Market Impact Scenarios

The three scenarios for potential market impacts described in the June 10, 1994 proposal were reanalyzed, incorporating the extended data on food component crediting. These three example market impact scenarios were developed using a model that constrained NSLP food cost to remain at the average per meal cost level determined by the School Lunch and Breakfast Cost Study and meet the proposed nutrient targets. The first scenario minimized change from current eating choices for specific commodities, but allows substitution among the 52 food groups. The second scenario is the same as the first, but demonstrates the effect of shifting all chicken to lower fat chicken to show how change in preparation or commercial availability can affect a particular commodity. The third scenario required that there be no change in the total quantities of the various major commodities used (except for butter), and tended to increase the relative use of the lower fat versions of the commodities (e.g., lower fat pork such as ham instead of ribs or bacon). In addition, the extended school lunch model was used to determine the average food cost for each of the four food components. The following describes the findings from these analyses.

Table 5 shows the results of applying the NSLP crediting rules to the three impact scenarios. The quantities shown in table 5 are daily averages across all grades K–12.

Meat/Meat Alternate

The proposed average minimum servings of meat/meat alternate is not met in Scenario 1, but is exceeded in Scenarios 2 and 3. Scenario 1 provides 1.9 ounces of meat/meat alternate, which is not sufficient to meet the 2 ounces minimum requirement for grades K–6 and 7–12. This scenario was developed to show the effect of minimizing the change in current food offerings (e.g., trying to maintain the percentage of meat/meat alternate from lower fat chicken and higher fat chicken). Since the grades K–3 meat/meat alternate requirement is 1.5 ounces, the actual average minimum requirement for grades K–12 will be slightly less than 2.0 ounces. However, at least 20 percent of the school meals would need to be provided using the K–3 pattern for the overall average minimum requirement to be 1.9 ounces. While more than 20 percent of all NSLP meals are served to children in grades K–3, for administrative efficiency these are often served using the meal pattern for older students, so the overall average minimum requirement is likely to be above 1.9 ounces.

Grains/breads

The proposed average grains/breads minimum servings is met or exceeded by all three scenarios. All three scenarios exceed the minimum requirement for grains/breads for grades K–6. Scenarios 1 and 2 also exceed the minimum requirement for grades 7–12. Scenario 3 provides 2.6 servings of grains/breads, which as discussed above, is equal to the overall weighted average proposed minimum for grains/breads.

Vegetables/fruits

The proposed average vegetables/fruits minimum servings is met or exceeded by all three scenarios. Scenarios 2 and 3, which allow for somewhat larger shifts in food preparation methods, provide more than the largest minimum requirement of the proposed food-based menu systems except for vegetables/fruits in scenario 3. The amount of vegetables/fruits in scenario 3, 0.9 cups, exceeds the amount required for grades K–6 (average 0.85 cups per day), and is approximately equal to the expected average minimum requirement across all NSLP meals. Over 60 percent of the meals are served to students in grades K–6, and some of these will be served in schools using the grades K–3 pattern, which requires only 0.75 cups vegetables/fruits, so the overall average minimum requirement across all NSLP meals is approximately 0.9 cups.

TABLE 5.—AVERAGE DAILY NSLP SERVINGS: BASELINE AND THREE SCENARIOS

	Meat/meat alternate (oz.)	Grains/breads (servings)	Vegetables/fruits (cups)	Milk (fl. oz.)
Baseline (SNDA)	2.8	2.5	1.0	7.5
Scenario 1 (no change of preparation techniques)	1.9	4.2	1.3	7.5
Scenario 2 (lower fat chicken preparation)	2.1	4.1	1.2	7.5
Scenario 3 (shifts of selections within components; no change in commodity markets)	2.9	2.6	0.9	7.5

Cost for Food Components

The extended school lunch model was used to estimate the average cost for each food component at baseline and for the three market impact scenarios. The cost for non-creditable foods which are sometimes served with lunch, such as non-fruit desserts, was also estimated. The average cost for a 2 ounce serving meat/meat alternate increased by about ½ cent in scenarios 1 and 2, and by 1 cent in scenario 3. This is consistent with the expectation of some food personnel that leaner selections from the meat/meat alternate component may increase unit cost for this component. The per serving cost also increased for vegetables/fruits. The average cost of ½ cup of vegetables/fruits increased by ½ cent in scenarios 1 and 2, and by 0.2 cents in scenario 3. The cost of 8 fluid ounces of milk remained the same in scenarios 1 and 2, and increased by 0.2 cents in scenario 3.

In contrast, the average cost of a serving of grains/breads decreased by 0.4 cents in scenarios 1 and 2 and by 0.7 cents in scenario 3. In scenarios 1 and 2, there was no change in the total 0.6 cents per meal available for non-creditable items, but in scenario 3, about 0.1 cents of this was shifted to creditable items.

This cost-per-component-serving analysis shows that the cost of food for the NSLP meals can be maintained, even when the average cost for some components increases, without severely diminishing the funds available for non-creditable foods which help flavor meals to meet individual preferences. The ability to select slightly less expensive items from the grains/breads component can effectively offset both the modest per serving cost increases in other components and the slightly increased average minimum requirement (+0.5 servings per week) for grains/breads.

By definition, the average results reported above mean that some school districts would be expected to experience food costs that vary considerably from those reported above. This is not different from the current situation because there is already a wide range of food costs due to factors such as economies of size, geographic variation in delivery and labor costs, and local market conditions. Similarly, average quantities served also vary among schools and sometimes within schools. If a school currently serving less than the average portions of grains/breads or vegetables/fruits opts for the proposed food-based menu planning system, they may have to increase the quantities offered.

Conclusion

In summary, the findings for the three scenarios indicate that the proposed NSLP food-based menu system requirements can be met within current food costs and with market impacts at levels presented in the June 10, 1994 Federal Register. At least some improvement in food preparation techniques and food selections within food categories would be needed to meet the proposed menu system requirements and RDA/Dietary Guidelines-derived nutrient targets for NSLP. Efforts which may influence the speed and direction of these shifts, such as training and technical assistance for school food service personnel in improved menu planning and food preparation techniques, development of improved recipes, and production of lower fat products by industry, could help to simplify implementation when the food-based menu planning system is selected.

b. Implementation Costs

This section expands upon the Section e. Implementation Cost contained in the June 10, 1994 Federal Register cost/benefit assessment to cover the food-based menu planning system option. As stated there, initial implementation costs faced by schools will vary depending on existing capabilities and resources within districts and will take many forms. This proposal provides schools with a new option, so they would have the option of selecting among NSMP, Assisted-NSMP, or the food-based menu planning system. Schools are expected to consider implementation costs in making their selection.

Local, State and Federal resources are available for implementation. USDA has already initiated a number of improvements which will assist in implementation, some of which apply to a specific planning system option and others which will assist schools in selecting the option best suited to their needs. These include updated and improved recipes for schools, a computerized data bank of standard nutritional values of meals served and a demonstration project on NSMP. The demonstration will incur much of the developmental cost of the basic NSMP system framework and identify cost effective strategies for implementation.

The Department believes that implementation of meal improvements will be facilitated if students are receptive to the changes in foods. A number of efforts will help encourage students to accept such changes. Central to this effort is the Department's Children's Nutrition Campaign, a multi-faceted national effort designed to motivate children to make healthier food choices by getting them excited about making choices and giving them the skills to do so. It is designed to deliver nutrition messages through multiple and reinforcing channels to maximize impact and credibility. Core components will be mass media and in-school efforts, supplemented by strategic public-private partnerships to leverage USDA investments and extend reach. The FY 1995 federal budget includes over $20 million to launch this campaign and to provide extensive training for school meal providers on how to plan and prepare nutritious and appealing meals. The Department has awarded nutrition education cooperative agreements to develop comprehensive community-based approaches to nutrition education. The Department is also assisting school food service professionals by working with chefs, farmers and others to make school meals appealing and healthful.

States receive over $90 million annually from the Federal level in State Administrative Expense (SAE) funds for

program oversight. A portion of these resources are available to assist in implementation. Some of the FY 1995 federal funds for training will be used to train states on implementation of the management systems needed to support food-based menu planning, including the requirement for periodic nutrient analysis of school meals by the State as a component of local reviews. In addition, since the review cycle has been extended from four years to five years, the proposed regulation would reduce the level of State resources devoted to local school food authority reviews, which is described in more detail below.

At the local level, if the proposed food-based menu planning system is selected, it may require training and technical assistance for some staff. The continuation of the historical food component definitions and crediting rules (with one improvement for grains in desserts) will simplify this implementation. However, meals must, on average over a week, meet the RDA/Dietary Guidelines-based nutrient targets, and achieving this through a food-based menu system requires a considerably greater level of nutrition knowledge than that required to fulfill a meal pattern only. For example, the meal planner must know which combinations of food choices over each week are acceptable to students and are likely to result in meals that offer at least the food component minimums and provide adequate calories, iron and other nutrients without exceeding the fat and saturated fat limits as a percent of calories.

A study of school food authorities in the mid-Atlantic region found that under the existing meal pattern system, 60 percent of school food authorities (SFAs) employ computers for some functions (Brewer, DeMicco and Conn, 1993). Over one-fourth of these districts had comprehensive systems that allowed them to do menu management and nutritional evaluations. The menu modification demonstrations found that the lack of appropriate computer software limited the feasibility of monitoring the nutritional quality of menus. More recently developed software has greatly enhanced the ability to perform these analyses, which will now be supported by a USDA developed data base. Schools with microcomputers should be able to use this software, and may opt to use it to assist in food-based menu planning, for example, to analyze the recipes of some popular entrees.

The cost analysis found that the nutrient requirements can be met at about the current cost of food in the National School Lunch Program. Because the foods used in the market impact analysis were drawn from what is currently being served, and various adjustments in preparation practices and frequency of food use can meet the food component minimums and nutrient requirements, USDA does not anticipate the need for significant changes in meal preparation practices that would affect the cost to prepare meals. The administrative cost of conducting the proposed food-based menu planning should be about the same as current operations once the system is fully implemented in a school.

In summary, since at the local level schools should make reasonable economic decisions and this proposal serves to increase their options, the Department does not anticipate increased local implementation cost due to this proposal. At the Federal and State levels, there will be increased cost to provide training and technical assistance for an additional option and to implement systems for management of this option in the event that some locals select food-based menu planning, with the majority of this cost being State implementation. The Federal component of this will be covered through revised budgeting for the funding available for Dietary Guidelines implementation in FY 1995 and subsequent years. At the State level, the initial planning and set-up for this additional food-based menu planning option is estimated to take about 80 hours of staff time for each State administrative unit (the time for ongoing operation is addressed in the following section). Therefore, at an estimated average rate of $25 per hour, the Department projects an average cost of $2,000 per State for initial planning and set-up. This cost would be covered by part of the savings from the reduction in administrative burden due to the previously proposed extension of the review cycle from four to five years.

c. Ongoing Costs and Other Significant Effects

Under this proposed rule, States will be required to perform nutrient analyses as a routine component of reviews of school food authorities using the food-based menu planning system, increasing the cost of ongoing program management. It is estimated that on average an additional 12 hours will be required for nutrient analysis for each food-based menu planning school reviewed. The actual total cost for these reviews will vary depending upon the percent of school food authorities selecting the food-based menu planning option. Since this percentage is unknown, a range of cost is projected including the upper bound of 100 percent. In consideration of the comments received from the food service community, the lower bound has been set at 25 percent. Given this range, and assuming an average rate of $25 per hour, the Department projects an increase in national aggregate State ongoing management cost for these reviews of $0.4 to $1.7 million. States can reduce the percent of schools using food-based menu planning by providing enhanced levels of training and technical assistance for NSMP and Assisted-NSMP.

To provide for the resources needed, this proposal continues the twenty per cent reduction in state monitoring requirements previously proposed. This reduction will enhance the level of resources available at the State level to focus on training and technical assistance efforts and nutrition reviews of food-based menu planning systems.

While implementation will require a dedicated effort on the part of the Department, the state agencies and local school food authorities, the cost of ongoing operation and maintenance of a food-based menu planning system at the local level will be indistinguishable from the current meal pattern based system.

d. Benefits

The health benefits and value due to risk reduction of improving school meals to be consistent with the principles of the Dietary Guidelines for Americans were discussed in the June 10, 1994 cost/benefit assessment. The addition of the food-based menu planning option retains the benefits as previously presented.

The SNDA study found that NSLP lunches significantly exceed the Dietary Guidelines recommendations for fat, saturated fat and sodium. Diet-related diseases accounted for almost 65 percent of all deaths in the U.S. in 1991 (National Center for Health Statistics, 1993). About 300,000 deaths per year, or about 14 percent of all deaths, has been estimated as the lower bound for deaths due to diet and activity patterns (McGinnis and Foege, 1993). The previous analysis concluded that if the reductions in fat and saturated fat intake instituted during the school years are continued into adulthood, the increase in life-years and the value in dollars based upon willingness to pay would be of a magnitude similar to or exceeding that estimated for the Food and Drug Administration (FDA) food labeling changes, which were $4.4 to $26.5 billion over 20 years. The lag time to realize this level of benefits over a 20

year period might be greater since FDA's estimates apply to the U.S. adult population and the proposed rule on school meals will begin to have effect with those children in school at the time of implementation. Since the food-based menu planning option requires that RDA and Dietary Guideline-based calorie and nutrient levels be provided, the health benefits should be the same as those of NSMP and Assisted-NSMP.

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[FR Doc. 95–2044 Filed 1–26–95; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Parts 210 and 220

National School Lunch Program and School Breakfast Program; Notice of Public Meeting

AGENCY: Food and Consumer Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: The Healthy Meals for Healthy Americans Act of 1994 amended the National School Lunch Act to require that meals served through the National School Lunch and School Breakfast Programs comply with the *Dietary Guidelines for Americans* beginning no later than the commencement of the 1996–97 school year. Compliance with the Dietary Guidelines is to be achieved through a variety of meal planning approaches including ''food-based menu systems.'' The food-based menu planning concept is published elsewhere in today's Federal Register. Further, the Act requires that the Department conduct a public meeting to discuss the proposed food-based menu systems. This Notice announces the meeting.

DATES: The meeting is scheduled for Friday, February 17, 1995, from 8:30 a.m. to 1:00 p.m. Persons who cannot attend the meeting may submit written comments on the proposed regulation. To be assured of consideration, comments must be postmarked on or before March 13, 1995, and comments transmitted via E-mail must be sent no later than 5 p.m. Eastern Standard Time on that same date.

ADDRESSES: The meeting will be held in the Williamsburg Room, Room #104A, Administration Building, USDA, 12th and Jefferson Drive, SW., Washington, DC 20250. Written comments should be sent to: Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Consumer Service (FCS), USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302. Comments may be sent via E-mail to: healthykids@esusda.gov. If comments are sent electronically, commenters should designate ''receipt requested'' to be notified by E-mail that the message has been received by USDA. Written submissions, the meeting transcript, and comment letters may be reviewed by the public in Room 1007 in the Alexandria office of FCS listed above during regular business hours of 8:30 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: William Wasserman, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302; (703) 305–2281.

SUPPLEMENTARY INFORMATION: This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

The National School Lunch and School Breakfast programs are listed in the Catalog of Federal Domestic Assistance under No. 10.553 and No. 10.555, respectively, and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and the final rule related notice published at 48 FR 29112, June 24, 1983.)

Background

Section 112(c) of Public Law (Pub. L.) 103–448, the Healthy Meals for Healthy Americans Act of 1994, enacted on November 2, 1994, amended section 9 of the National School Lunch Act (NSLA), 42 U.S.C. 1758(f), to require that the Department develop ''food-based'' systems for school food authorities to use in planning and preparing meals served under the National School Lunch Program (NSLP) and School Breakfast Program (SBP). Section 106(b) of Pub. L. 103–448 also amended section 9 of the NSLA, 42 U.S.C. § 1758(f)(2)(A), to require that school meals meet the Dietary Guidelines for Americans by July 1, 1996, unless the State agency permits later implementation.

Section 112(c)(2) of Pub. L. 103–448 (42 U.S.C. § 1760(k)(2)) also requires that the Department hold a public meeting to ''discuss and obtain public comments on the proposed rule'' not later than 45 days after the publication of the proposed regulation. The legislation states that the meeting shall be held with, among others, representatives of affected parties, such as program administrators, school food service personnel, parents, and teachers. Further, the legislation mentions inclusion of organizations, such as public interest antihunger organizations, health and consumer groups, food manufacturers and vendors, and nutritionists.

In addition to this Notice, the Department is issuing invitations to organizations and individuals who may have an interest in this proposal. Among those specifically invited are the American School Food Service Association, National PTA, Public Voice for Food and Health Policy, American Heart Association, American Dietetic Association, Center for Science in the Public Interest, the American Academy of Pediatrics, and the National Education Association, as well as organizations representing major food manufacturers or vendors that sell food products to the school meal programs. In addition to hearing comments from invitees, one hour will be reserved at the close of the meeting for observers who, on a first-come, first-serve basis and subject to time limits, wish to present their comments. Written material will also be accepted from

participants and observers who want to provide additional information.

An official transcript plus any additional material submitted through this public meeting will be considered in development of the final regulations on nutrition standards and menu planning approaches.

Dated: January 18, 1995.

William Ludwig,

Administrator, Food and Consumer Service.

[FR Doc. 95–2045 Filed 1–26–95; 8:45 am]

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Federal Register

Friday
January 27, 1995

Part V

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 20

Public Information; Communications With State and Foreign Government Officials

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 20

[Docket No. 94N–0308]

Public Information; Communications With State and Foreign Government Officials

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations governing communications with officials of State and foreign governments. This proposal will permit FDA to disclose to, and receive from, these officials certain nonpublic information without being compelled to disclose the information to the public generally. This proposal addresses the nonpublic exchange of two types of information. First, it allows the disclosure of nonpublic safety, effectiveness, or quality information concerning FDA-regulated products to State government officials. Second, it allows the disclosure of draft proposed rules and other nonpublic predecisional documents concerning regulatory requirements or activities between FDA and either State or foreign government officials. This action is necessary to enhance cooperation in regulatory activities, to eliminate unfounded contradictory regulatory requirements, and to minimize redundant application of similar requirements.

DATES: Written comments by April 27, 1995. FDA is proposing that any final rule that may issue based on this proposal become effective on or before February 27, 1995.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Linda R. Horton, International Policy Staff (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2831.

SUPPLEMENTARY INFORMATION:

I. Background

Historically, FDA's communications with State and foreign government officials generally had the same status as communications with any member of the public. Under FDA's rules as they were originally published in 1974, under many circumstances, the disclosure of agency records by FDA to such government officials constituted disclosure to the public and obligated FDA to make the same records available to the public upon request. As discussed below, however, there have been certain longstanding exceptions to this general rule of uniform access.

FDA is a strong supporter of the public's ''right to know'' about government actions and public access to official information. There are times, however, when public disclosure of information will undermine other legitimate private rights and government responsibilities. In drafting the Freedom of Information Act (the FOIA) (5 U.S.C. 552), Congress recognized the need for the Federal government to be able to withhold certain categories of information from public disclosure. Examples of such categories of records relevant to FDA include:

1. Trade secret and confidential commercial information to protect intellectual property rights and research incentives (5 U.S.C. 552(b)(4));

2. Predecisional documents to protect the deliberative process (5 U.S.C. 552(b)(5));

3. Information the disclosure of which may invade personal privacy (5 U.S.C. 552(b)(6)); and

4. Investigatory files compiled for law enforcement purposes to protect investigations into misconduct (5 U.S.C. 552(b)(7)).

Since 1974, significant changes in the world economy and in the activities of the regulatory agencies of the world's governments have caused FDA to work more closely with other government officials (i.e., local, State, and foreign officials, as well as fellow Federal officials) as professional colleagues in the attempt to find solutions to public health and consumer protection problems.

Increased international commerce and diminished resources for regulation have resulted in efforts by public health regulatory agencies around the globe to enhance the effectiveness and efficiency of their operations. Public health regulatory agencies are protecting the public by harmonizing regulatory requirements; minimizing duplicative regulations; and cooperating in scientific, regulatory, and enforcement activities. Similar factors have demanded enhanced cooperation among all levels of government within the United States. To facilitate these national and international cooperative activities, regulatory agencies, both within the United States and worldwide, have taken steps to increase communications with their counterparts when developing proposed regulations or formulating important regulatory decisions. These discussions occur not only with respect to FDA-regulated products, but in other areas where cooperation is essential, e.g., aircraft safety, pesticide registration, and nuclear power regulation.

An example of the trend toward increased international information sharing is the 1993 revision to FDA's public information regulations, § 20.89 (21 CFR 20.89), providing that, under specified conditions, FDA may disclose certain nonpublic safety, effectiveness, or quality information concerning FDA-regulated products to foreign government officials without being compelled to disclose the information to the public (58 FR 61598, November 19, 1993). In this document, FDA is proposing a regulation authorizing disclosure of certain nonpublic safety, effectiveness, and quality information to State government officials to parallel the existing regulation for disclosure of this kind of information to foreign government officials. The purpose of this action is to enhance Federal-State cooperation in regulatory activities. In this document, the term ''State government officials'' can include local officials, because local governments are the legal instruments of the States. However, FDA generally works with State, not local governments, and information exchange with State officials is the more common situation.

FDA is also proposing to exchange (i.e., to disclose, to receive, or to do both) certain nonpublic predecisional documents concerning FDA's or another government's (local, State, or foreign) regulations, requirements, or activities without being compelled to generally disclose the information to the public. The purpose of this action is to facilitate the elimination of unnecessary, contradictory regulatory requirements and to minimize unwarranted, redundant application of similar requirements by multiple domestic and foreign regulatory bodies. Further, this proposed action is intended to enhance FDA's implementation, consistent with the laws it administers, of U.S. policies and obligations resulting from our country's duties under international agreements. FDA believes both changes proposed in this document will enhance consumer protection and increase consumer access to safe, effective, and high quality products that are regulated by FDA.

A. Disclosure of Information to the Public: General Statutory and Regulatory Provisions

FDA's regulations governing public information in part 20 (21 CFR part 20) implement the FOIA, 5 U.S.C. 552, and

other laws that affect public access to government records and information (e.g., the Trade Secrets Act (18 U.S.C. 1905) and section 301(j) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 331(j)). Section 20.21 of FDA's public information regulations states a general rule that any record of the agency that is disclosed in an authorized manner to any member of the public is available for disclosure to all members of the public. As stated earlier, communications by FDA with State and local government officials and with foreign government officials generally have had the same status as communications with any member of the public.

However, subpart E of part 20 identifies several categories of officials or institutions to whom, under specified limitations, disclosure of certain FDA records may be made without requiring uniform access under § 20.21. These include State and local government officials, under limitations specified in § 20.88, and foreign government officials, under limitations specified in § 20.89. FDA believes that consumer protection will be enhanced if FDA is able to exchange information with other government agencies at an earlier stage than is possible under present rules, and if FDA is able to share with these officials certain categories of information that may not be exchanged under present rules. FDA further believes that protection of intellectual property rights, research incentives, deliberative processes, and similar important needs will not be compromised if certain conditions are met by the recipients of such information.

B. Exchanging Confidential Commercial Information With State and Local Government Officials: Statutory and Regulatory Provisions

Special provisions of the act and FDA regulations permit FDA to treat State and local government officials commissioned by FDA or under contract with FDA essentially as FDA employees. The act authorizes the Secretary of the Department of Health and Human Services (HHS) to conduct examinations and investigations for the purposes of the act through employees of HHS or through any health, food, or drug officer or employee of any State, territory, or political subdivision thereof, commissioned by the Secretary as an officer of HHS (21 U.S.C. 372(a)). This authority has been delegated to FDA (21 CFR 5.10(a)). To facilitate implementation of this provision, § 20.88(a) provides that a State or local government official commissioned by FDA under 21 U.S.C. 372(a) shall have the same status with respect to disclosure of FDA records as any special government employee under Federal personnel law.

These provisions allow these commissioned officials to review confidential FDA investigative files and proposed policy statements that normally must be restricted to Federal employees. FDA's ability to solicit the advice and tap the expertise of its State and local colleagues without publicly disclosing investigational information outside the agency is a major advantage of the State Commissioning Program. The same rationale supports a broadening of FDA's ability to share information with other State employees.

FDA's current regulations also provide that communications with State and local government officials with respect to law enforcement activities undertaken pursuant to a contract with FDA shall be subject to the same rules that protect FDA investigatory records from public disclosure. (See § 20.88(b)). Under existing § 20.88, however, communications by FDA with State and local government officials who are neither commissioned by FDA under 21 U.S.C. 372(a), nor under FDA contract, have the same status as communications with any member of the public. Although § 20.88(c)(1) does provide additional protection for investigatory records and trade secrets and confidential commercial information that have been voluntarily disclosed to FDA as part of cooperative law enforcement and regulatory efforts by such noncommissioned and noncontract State and local government officials, the existing regulation does not allow FDA employees to reciprocate with respect to confidential commercial information. FDA may not disclose to noncontract and noncommissioned State officials confidential commercial information submitted to or incorporated into records prepared by FDA. Under current regulations, such disclosure would invoke the uniform access to records requirement in § 20.21, and trigger public availability of this information.

With respect to investigatory records compiled for law enforcement purposes, FDA's rules have long provided the agency with authorization to exchange such investigatory records with State or local government officials who perform counterpart functions to FDA at the State or local levels as part of cooperative law enforcement efforts. (See § 20.88(c)). Such an exchange does not invoke the uniform access rule established by § 20.21. FDA is proposing to expand the categories of information subject to this approach in order to enhance Federal-State efforts to protect the public health.

C. Exchanging Confidential Commercial Information With Foreign Government Officials: Recent Changes in Regulatory Provisions

When FDA's regulations governing exchange of information with foreign government officials were first codified, national economies worldwide were more independent of one another than now, and regulatory agencies worldwide discharged their responsibilities more independently of one another. Even in 1974, however, the importance of those relationships to the public health and the mission of FDA was clear to the agency. In the preamble to the proposed regulations, the Commissioner of Food and Drugs emphasized ''the importance of maintaining good working relationships with counterpart agencies throughout the world both to sound diplomatic relations with foreign nations and to the availability of important new information of regulatory significance. Such cooperation is encouraged by sections 301 and 308 of the Public Health Service Act (42 U.S.C. 241 and 242f). Unless regulatory information can be exchanged without required public disclosure, FDA will lose its sources of important information that are vital to protect the public, and will be unable to disseminate preliminary information when it is first generated within this country in order to help protect the public health throughout the world.'' (See 39 FR 44602 through 44621, December 24, 1974).

Although the agency at that time declined to implement the suggestions of foreign governments that FDA exchange nonpublic safety and effectiveness data with counterpart officials, the Commissioner's response to those suggestions was at least partially based on the belief that the regulations proposed in 1974 would ''adequately satisfy the need for international exchange of important regulatory information of this type.'' (See 39 FR 44602 at 44636 and 44637).

In the intervening 20 years there have been great changes in the world economy and the working relationships of regulatory agencies around the globe. Experience has shown that efficient and effective regulation can be facilitated by the exchange of confidential commercial information between governments. Cooperation in review of product approval applications is one example of the benefit such exchange can bring to consumers and to industry.

In 1992, FDA proposed to amend § 20.89 to expand the exchange of

information with foreign officials to include certain confidential commercial information, such as studies supporting product approval (57 FR 61598, June 26, 1992). The agency issued a final rule on November 19, 1993 (58 FR 61598). Section 20.89 as amended allows the agency, under specified conditions, to disclose confidential commercial information such as nonpublic safety, effectiveness, or quality information concerning FDA-regulated products to foreign government officials who perform counterpart functions, without compelling the public disclosure of the information. The rule covers confidential commercial information submitted to the agency, or incorporated into agency-prepared records, as part of cooperative law enforcement or regulatory efforts. Under the amended regulation, several conditions must be met before FDA may disclose the information to the foreign government official. The conditions are the same as those proposed below with respect to analogous disclosures to State and local government officials.

One condition requires the foreign government agency to provide a written statement certifying its authority to protect the information from public disclosure and its commitment not to disclose the information without the written permission of the sponsor or written confirmation from FDA that the information no longer has confidential status. FDA requires this written statement to: (1) Include specified language; (2) bear the signature, name, and title of the responsible foreign government official; and (3) be submitted to FDA after the official is informed about the significance the agency attaches to the confidentiality of the information and understands that disclosure by the foreign government could constitute a criminal violation and would seriously jeopardize any further interaction between FDA and the foreign counterpart agency.

As discussed in the preamble to the 1993 final rule, that rulemaking was undertaken because FDA concluded that it needed to revise its public information regulations to disclose to foreign government officials confidential commercial information submitted to FDA or incorporated into agency-prepared records in order to provide clear authority for cooperation in reviews of pending submissions and other important international exchanges of regulatory information. The 1993 final rule facilitates the approval of products that are shown to be safe and effective, expedites the withdrawal of approval of products that are found not to be safe and effective, and enhances the efficiency of FDA's enforcement efforts, while providing safeguards against public disclosures of proprietary information and conflicts of interest.

D. The Need to Extend to State Government Officials the Recent Changes in Provisions for Exchanging Confidential Commercial Information With Foreign Government Officials

FDA and State agencies work cooperatively and in a complementary manner to protect the nation's public health with regard to FDA-regulated consumer products. While States usually defer to FDA to approve the marketing of FDA-regulated products, some States actively regulate or monitor, within their State and under their own authorities, the clinical trials of some investigational new drugs, biologic products, and medical devices. In addition, most States have active enforcement programs, especially for foods.

FDA needs to be able to exchange information with State or local officials, without being limited to those who are commissioned or are under contract under § 20.88(a) and (b), FDA commissions State government officials, or enters into contracts with State agencies, primarily for the performance of cooperative regulatory work. However, certain cooperative efforts are more dependent on information exchange followed by coordination between Federal and State authorities, rather than on actual work performed by State authorities on behalf of Federal programs. In some regulatory efforts where the need for information exchange is paramount, FDA may be able to rely on FDA commissioned and contract employees in order to share confidential commercial information in the possession of FDA that is necessary to accomplish the agency's public health mission. But, as discussed below, commissioning and contracting, which are essential prerequisites under the current regulation, consume inordinate time and human resources and are not suited to dealing with information exchanges on rapidly developing problems.

Arrangements for issuing commissions are handled by State commission liaison officers located in FDA's regional offices. The commissioning process includes identifying suitable candidates (which often will require that supervisors or State agency heads also be commissioned), reviewing the candidates' qualifications to carry out activities specified in the commission, issuing certificates and credentials, and accounting for the credentials on a periodic basis. FDA's experience has been that this mechanism is too rigorous, costly, and time-consuming to enable the rapid exchanges of confidential information with State government officials that are essential in public health emergencies and investigations. Furthermore, the State government official who is commissioned, and therefore permitted access to confidential commercial information in FDA's possession, is frequently not the employee who, in any particular case, is best capable of analyzing or evaluating the nonpublic information.

Similarly, contracting projects are not suited for cooperative Federal-State regulatory efforts requiring rapid exchange of information. Contracts are solicited, negotiated, and put in place according to formal U.S. Government contracting procedures; for continuing work, contracts must be renewed annually. In addition to being time-consuming to establish, contracts cannot be relied upon to cover all FDA program areas. The services most commonly procured by FDA through contracts with the States are for establishment inspections, with related collection and analysis of samples, report preparation, and followup activity undertaken by the State agency under its own authority and program. FDA program areas are not covered uniformly across the States, with FDA having contracts in many (but not all) States for food inspections, but in only a few States for drug, biologic product, and medical device inspections.

The following are examples of situations in which the ability to share confidential commercial information with State governments in a less encumbered manner would have allowed more timely review of significant public health issues, or would have enhanced the effectiveness of regulatory activities:

1. FDA and some States acquire information from ongoing clinical investigations of new drugs, biologic products, or medical devices, including unanticipated adverse reaction or device malfunction data, clinical protocols, identities of study sites, and names of clinical investigators. When problems occur that could have an impact upon the safety of study subjects, public health decisions concerning the continuation of the study must be based upon the most complete information possible. This is facilitated by access to records at the study sites, and in certain situations it would be consistent with public health protection for State officials to have access to records that

FDA must evaluate in its review of the problem.

Under the existing regulations, State government officials can share information that they receive or acquire with FDA. However, because information concerning investigational drugs and medical devices is often confidential commercial information, FDA cannot reciprocate, unless the State officials are commissioned or under contract for law enforcement purposes. As explained above, the processes for issuing commissions to State government officials or placing them under contract are so cumbersome and time-consuming as to impede joint Federal-State efforts on clinical trials in progress that require a two-way exchange of relevant information. Such restrictions on the exchange of this information can hinder decisionmaking, for both FDA and State governments, where timeliness is important to protecting public health.

Further, State governments, on occasion, have not had ready access to information about pending FDA regulatory actions concerning clinical trials in progress that may involve health care institutions or individuals which operate under State licenses, permits, or registrations. In such circumstances, the current impediments to full-information exchanges thwart effective, coordinated regulatory solutions to public health problems. For example, in the case of Narcotic Treatment Programs (NTP's), FDA coordinates actions with the State agencies charged with regulating these types of clinics. Such coordination is essential because if FDA plans enforcement action that would close a program, the assistance of the State agencies is necessary to minimize disruption to the treatment of patients. The rapid exchange of nonpublic information can also enhance protection of the public health when a State has broad authority to require an unsafe or violative establishment within its borders to cease operations.

2. Both FDA and State agencies have responsibilities for Institutional Review Boards (IRB's), which are the boards or committees formally designated by institutions to review, to approve the initiation of, and to conduct periodic review of, biomedical research involving use in human subjects of FDA-regulated products (21 CFR § 56.102(g)). In the case of noncompliant IRB's, FDA regulations allow the agency to notify relevant State and Federal regulatory agencies and other parties with a direct interest about any action FDA may take against the IRB or its parent institution (21 CFR 56.120). In some instances, State action against violations may be preferable to Federal action, or a State may have authority to expeditiously revoke the license of a program or clinic operating under that violative IRB. However, State officials may need access to confidential information about the protocol or investigational product, including nonpublic confidential commercial information contained in IND's and NDA's, in order to take effective action. This proposed rule would permit FDA to share such information, where the agency, in its discretion, believes it is appropriate.

3. Health fraud enforcement often involves several agencies or officials at both the Federal and State government levels. At the outset of a case, the involved State officials may be commissioned by FDA or under contract to FDA and, therefore, have access to relevant confidential commercial information in FDA records. However, as evidence is gathered and the case develops, a point is reached when enforcement strategy must be discussed with other State government officials, who seldom hold FDA commissions or are under contract. Under the current regulations, these State government officials may not have access to pertinent information from FDA records, including information about the identity of investigational products or distribution data that may bear on the case. In such circumstances, the process of investigating and prosecuting the case is frustrated and delayed. That delay and the resulting harm to specific investigations are aggravated in cases where a perpetrator may be operating in several States.

In one particular case, a State official responsible for issuing and revoking medical licenses requested reports covering FDA investigations of health fraud by a physician who was illegally importing and distributing unapproved drugs. The State was initiating a license revocation proceeding. Because the current version of § 20.88 makes disclosure to a noncommissioned or noncontract State employee a public disclosure, the records provided by FDA had to be purged of information vital to the State's revocation case. Consequently, action to protect the public health in this instance was impeded by FDA's inability to disclose nonpublic information to the appropriate State official in a timely manner.

4. Data in FDA's possession about the distribution of an imported product may contain confidential commercial information. Many imported products can be tracked by State officials more economically and efficiently than by FDA officials, because the tracking can be done in the course of regular State inspectional activities. Under current regulations, FDA's authority to disclose nonpublic information about consignees to State government officials for followup action, such as embargo of violative products, is limited.

A common element of these examples is that joint FDA and State government efforts on significant public health issues, including effective regulatory activities, have been encumbered by existing regulatory restrictions on FDA's ability to exchange confidential commercial information with State governments. The amendment being proposed would facilitate such disclosures and thereby contribute to economy of effort, efficient use of public resources, and enhanced public health protection.

Additionally, FDA believes it should have the ability to disclose proprietary information to State government scientists visiting FDA as part of a joint review or long-term cooperative training effort authorized under section 708 of the act (21 U.S.C. 379), pursuant to the same procedures FDA recently promulgated for visiting foreign scientists. Efficient public administration requires that FDA be able to deal with visiting State government scientists in the same manner as it does with visiting foreign government scientists.

This proposed rule, therefore, would provide, through an amendment to § 20.88, the same mechanisms for exchanges of confidential commercial information between FDA and State government officials as were recently provided for foreign government officials through an amendment to § 20.89. Under the proposed amendment, several conditions must be met prior to FDA's disclosure of such information to State government officials.

First, the State government agency must provide a written statement certifying its authority to protect the information from public disclosure and its commitment not to disclose the information without the written permission of the sponsor or written confirmation from FDA that the information no longer has confidential status. Second, FDA must make one or more of the following determinations: (1) The sponsor of the product application has provided written authorization for the disclosure; (2) disclosure would be in the interest of public health by reason of the State government's possessing information concerning the safety, effectiveness, or

quality of a product or information concerning an investigation; or (3) the disclosure is to a State government scientist visiting FDA on the agency's premises as part of a joint review or cooperative training effort, and FDA (a) retains physical control over the information, (b) requires a written commitment to protect the confidentiality of the information, and (c) implements specific conflicts-of-interest safeguards.

E. Cooperation and Harmonization Needs for Exchanging Nonpublic Predecisional Documents and Other Nonpublic Information With State and Foreign Government Officials

FDA is committed to cooperation with counterpart officials in State and foreign governments. Because public health problems respect neither State boundaries nor international borders, such cooperation is essential to consumer protection.

If FDA can provide foreign government officials with information on impending new or changed regulations and other requirements or activities, the agency can encourage adoption of uniform science-based measures that fully protect consumers, and can help reduce both duplication of regulatory activities and unfounded or contradictory regulatory requirements. FDA likewise benefits from the ability to receive drafts of proposed regulations from foreign and State government officials without being required to disclose these drafts to an FOIA requester because the risk of such public disclosure frequently inhibits foreign and State counterparts from full disclosure of useful information to FDA. For continuity in regulatory harmonization efforts at all levels of geopolitical organization (State, national, and international), FDA must be able to more freely communicate on regulatory matters and initiatives with counterpart government officials.

The following are examples of situations in which the ability to exchange nonpublic predecisional documents with State and foreign government counterparts would improve Federal-State uniformity and facilitate global harmonization of regulatory requirements.

1. Information exchange between FDA and its foreign government counterparts is necessary in order to utilize the technical expertise of other regulatory agencies for purposes of harmonizing regulations and regulatory activities. Current increases in worldwide trade, as well as recent trade agreements, add impetus to harmonization activities already underway. For example, FDA wanted to, but could not, disclose to foreign counterpart officials at 1993 international meetings, the drafts of its proposed rules on medical device good manufacturing practices (published in the Federal Register of November 23, 1993 (58 FR 61952)), and on regulations of seafood safety through Hazard Analysis Critical Control Points (HACCP) (published in the Federal Register of January 28, 1994 (59 FR 4142)). FDA believes its harmonization and rulemaking activities in these areas would be enhanced by nonpublic exchange of such draft proposals.

2. The Food Code, published in the Federal Register of January 28, 1994 (59 FR 4085), consists of model requirements to safeguard public health and assure that food is unadulterated and honestly presented when offered to consumers. The Food Code was offered as a model for local, State, and Federal governmental jurisdictions to adopt under their own authorities as regulations for food service, retail food stores, or food-vending operations. Because concerns about confidentiality limited FDA's ability to exchange predecisional documents, access to developmental materials and drafts was limited to State government officials who were commissioned by FDA. Consequently, it was difficult for FDA to get technical contributions and professional views from the reservoir of expertise among many other State officials. FDA believes this limitation on nonpublic exchange is detrimental to Federal-State cooperation. By its very nature, the Food Code is central to public health programs of Federal, State, and local government organizations. As such, FDA would have preferred to share developmental materials and drafts with a spectrum of State government officials to assure participation in the development of the document by some of the officials who will rely on it in the course of their ongoing work.

3. The successful development and implementation of a comprehensive food safety strategy, beyond the program for seafood safety, will depend on a joint effort between FDA and State government officials. FDA's decisions would benefit greatly from exchange of technical expertise and professional views at all stages in the development of a strategy. The importance of State government input and partnership is underscored by the fact that, while FDA regulatory authority is very broad, in practice many phases of food production and distribution are regulated principally by State or local governments.

4. Some aspects of the Nutrition Labeling and Education Act (the NLEA) address consumer issues that traditionally have been addressed by State governments in food label review, e.g., content descriptors, net weight declarations, and other elements that could relate to economic deception. Congress intended, and FDA desires, that there be a partnership between FDA officials and their State government counterparts in the education and enforcement aspects of this legislation. However, although FDA has been able to involve State government officials who hold FDA commissions in strategy discussions, the agency has not been able to utilize the broader base of expertise that resides throughout State governments. Further, although the NLEA empowers the States to take action under the authority of the act, and requires the States to notify FDA prior to initiating any action, it requires the sharing of only very basic information. Enhanced ability to exchange nonpublic information between FDA and State government officials will facilitate enforcement of the NLEA.

5. The Mammography Quality Standards Act of 1992 (the MQSA), which is now being implemented, poses many challenges with regard to Federal-State cooperation and coordination. The MQSA calls for FDA to delegate the MQSA authority to States that meet certain requirements, and for FDA to provide oversight to ensure that States fulfill their responsibilities. One objective of the MQSA is to maintain a certain consistency of standards across State programs. Like the Federal government, States establishing new programs and standards are bound by administrative rulemaking processes, and will want to undertake those rulemakings as soon as possible. So long as FDA's regulations limit the nonpublic exchange of draft regulations, States may draft rules that will turn out to be inconsistent with FDA's. That inconsistency may delay and frustrate implementation of the provisions of the MQSA that are intended to encourage State involvement in programs to assure quality mammography. If FDA and State officials could exchange draft regulations at all stages of the process, States could propose regulations that were consistent with Federal regulations within coordinated timeframes.

The enforcement and sanctions processes for the MQSA also pose challenges to Federal-State cooperation and coordination. There are approximately 11,300 facilities to be inspected, only about 30 percent of which will be inspected by FDA. Strategies for inspection priorities and Federal-State uniformity in the

application of enforcement actions and sanctions will be very important. If FDA cannot easily exchange nonpublic information with State government officials, cooperative efforts may be less effective.

F. Summary of Background

Exchanges of nonpublic information that meet the conditions established in the proposal will facilitate Federal-State uniformity and international harmonization in order to maximize consumer protection and minimize the possibility that unnecessarily disparate measures will be adopted on a particular issue. In order to enhance effective regulatory activities and expeditious review of significant public health issues, FDA has concluded that it needs the ability, in selected circumstances, to disclose confidential commercial information to State government officials, just as it earlier determined that it may be necessary at times to disclose such information to foreign government officials. Furthermore, in order to prepare new regulations or modify existing regulations, issue technical requirements, or undertake a variety of other activities, FDA may need to exchange draft proposals with counterpart State government or foreign government officials in the same way it exchanges similar information with other U.S. government agencies. Federal-State uniformity and international harmonization are facilitated when such exchanges can take place at early stages under circumstances that allow the frank exchange of views among technical experts. FDA's experience over the last decade has convinced the agency that foreign and State government technical and scientific staff perform the same advisory function, in many instances, as other agency employees and that the recommendations of such experts are important to effective decisionmaking.

Of course, any information provided by State or foreign government officials upon which FDA is relying in proposing a new regulation or proposed change in existing regulations would be included in published proposals or final rules in accordance with the Administrative Procedure Act (5 U.S.C. 553). The general public will have ample opportunity to comment on such proposals and their bases at that time. FDA also emphasizes that disclosures to foreign and State counterparts under final regulations based on these proposals would not be a routine occurrence, but would occur only in limited situations.

II. Proposed Amendments

A. The Proposal to Extend to State Government Officials the Recent Regulatory Provisions for Exchanging Confidential Commercial Information With Foreign Government Officials

Proposed § 20.88(d) covers the nonpublic disclosure of certain information that is protected from mandatory public disclosure by exemption 4 of the FOIA, 5 U.S.C. 552(b)(4) to State government officials. Exemption 4 covers two broad categories of information in Federal agency records: Trade secret information, and information that is: (1) Commercial or financial, (2) obtained from a person, and (3) privileged or confidential (''confidential commercial information'').

Trade secret information has been defined by the courts as information relating to the making, preparing, compounding, or processing of trade commodities (*Public Citizen Health Research Group* v. *FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983)). This definition, which requires a ''direct relationship'' between the trade secret and the productive process, applies to a relatively narrow category of information that coincides with information prohibited from disclosure under section 301(j) of the act (21 U.S.C. 331(j)). FDA recently amended § 20.61 to reflect this definition (59 FR 531, January 5, 1994). That amendment was part of an update of the agency's FOIA regulations to reflect changes that were required by the 1986 amendments to the FOIA and which have already been put into practice by the agency. The amended definition of ''trade secret'' in part 20 is a restatement of the standard established by *Public Citizen Health Research Group*, and puts the definition in conformity with applicable case law and with HHS's FOIA regulations. Because FDA's practice has been in accordance with the judicial standards that resulted from *Public Citizen Health Research Group* and with the definitions established by HHS, the amendment to § 20.61 did not alter the agency's practice in any way or the expectations of the public or regulated industry concerning FDA's treatment of particular types of information.

Nor will the proposed amendment to § 20.88 alter FDA's existing practice with respect to the narrow category of information that can be considered ''trade secret.'' The proposed amendment to § 20.88 expressly excludes the disclosure of information that would fall into the trade secret category to State government officials, without the express authorization of the submitter. The only exception is that State scientists visiting FDA as part of a joint review or long-term training effort authorized under section 708 of the act (21 U.S.C. 379) may, under additional safeguards specified in the rule, be allowed access to such information.

It has been an agency practice to disclose confidential information, including trade secret information, to visiting government scientists insofar as that access is authorized under confidentiality agreements for a training or joint review activity under section 708 of the act and § 20.90. This proposed rule (§ 20.88(d)(1)(ii)(C)) codifies the procedures for providing access to such information in the rule on exchanging information with State government officials rather than continuing this practice under the more general § 20.90 procedures.

The principal focus of this part of the proposed rulemaking is the disclosure to State government officials of the other category of information covered by exemption 4 of the FOIA, ''confidential commercial information,'' including agency-prepared reviews of such information, and records that include such information. Commercial or financial information that a person is required to provide FDA is ''confidential'' for purposes of exemption 4 if disclosure of the information is likely to: (1) Impair the Government's ability to obtain necessary information in the future or (2) cause substantial harm to the competitive position of the person from whom the information was obtained. (See *Critical Mass Energy Project* v. *NRC*, 975 F.2d 871, 877–880 (D.C. Cir. 1992) (en banc), cert. denied, 113 S.Ct. 1579 (1993); *National Parks and Conservation Association* v. *Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974).) Commercial or financial information that is provided to FDA on a voluntary basis is ''confidential'' if it is of a kind that the provider would not customarily release to the public. (See *Critical Mass Energy Project* at 880). The types of information that may be exempt from public disclosure pursuant to this section of the FOIA include: Business sales statistics, customer and supplier lists, research data, profit and loss data, and overhead and operating costs. Under many circumstances, FDA also treats data supporting product approval submissions as confidential commercial information that is entitled to be prohibited from public disclosure. Thus, under the amended regulation, confidential commercial information submitted to the agency that could be disclosed to State governments would

include information (other than trade secret information prohibited from disclosure under section 301(j) of the act) in pending and approved submissions for permission to perform studies on or to market regulated articles such as new drugs, new animal drugs, medical devices, and biological products, and information in agency-prepared reviews of such submissions.

The proposed amendment to § 20.88 would establish that State government officials are not members of the public for purposes of disclosure of confidential commercial information submitted to FDA or incorporated into records prepared by the agency, and that such disclosures would not invoke the requirements in § 20.21 of uniform access to records. Disclosure of confidential commercial information to State government officials pursuant to the proposed amendment would be an ''authorized'' disclosure. Accordingly, no FDA employee engaged in such a nonpublic disclosure of confidential commercial information would be in violation of the Trade Secrets Act, 18 U.S.C. 1905. That statute makes the unauthorized disclosure of such information by a Federal employee a crime.

The proposed amendment to § 20.88 will enable FDA, in its discretion and subject to the conditions imposed by this proposed amendment, to provide or receive confidential commercial information (whether provided by the sponsor or found in investigatory records) in nonpublic exchanges with State government officials for use in cooperative regulatory efforts or law enforcement efforts. FDA will be able to make such exchanges of confidential commercial information contained in submissions, in FDA- or State government-prepared reviews and records of such submissions, and in FDA- or State government-prepared investigatory records, without invoking the rule established in § 20.21 that any member of the public becomes entitled to the same information.

The agency does not intend that disclosures of confidential commercial information to State government officials will be a routine occurrence. FDA intends to engage in the disclosure of nonpublic confidential commercial information to State government officials only when certain conditions are met, and only in its discretion. In every case, the proposed rule (§ 20.88(d)(1)(i)) would require assurances from the State government that the information will be held in confidence. The proposed rule (§ 20.88(d)(1)(ii)) would further require that any one of three additional conditions be met: (1) Written authorization by the submitter of the information; (2) a finding that disclosure is in the interest of public health by reason of the State government's possessing information concerning the safety, effectiveness, or quality of the product or information concerning an investigation, or by reason of the State government being able to exercise its regulatory authority more expeditiously than the agency; or (3) the disclosure is to a State government scientist visiting FDA as part of a joint review or long-term cooperative training effort that furthers FDA's regulatory mission. Thus, the circumstances and safeguards under which FDA would exchange confidential commercial information with State government officials pursuant to the proposed amendment to § 20.88 would be the same as those recently provided in the 1993 amendment to § 20.89 regarding FDA disclosure of confidential commercial information to foreign government officials.

B. Proposals for Regulatory Provisions for Exchanging Predecisional Documents and Other Nonpublic Information With State and Foreign Government Officials

The agency is proposing to amend §§ 20.88(e) and 20.89(d) to cover the nonpublic exchange between FDA and State government officials (§ 20.88(e)) and between FDA and foreign government officials (§ 20.89(d)), of nonpublic predecisional documents concerning FDA's and other governments' proposed regulations, impending regulatory initiatives, or other nonpublic information relevant to agency activities (including, but not limited to, draft regulations, guidelines for technical issues to be addressed in sponsors' submissions, draft staff manual guides, draft compliance policy guides, strategy documents for inspection priorities, and draft MOU's between State, Federal, and foreign government agencies).

FDA wants the ability, in some circumstances and only when specific conditions are met, to exchange predecisional, preimplementation, or other nonpublic documents with State government officials and foreign government officials, without being compelled to disclose them to the public.

For the purposes of § 20.88(e) of this proposed regulation, the term ''official of a State government agency'' may include an official of an organization of State officials having responsibility to facilitate harmonization of State standards and requirements in FDA's areas of responsibility. Similarly, for the purposes of § 20.89(d) of this proposed regulation, the term ''foreign government official'' may include an official of an international organization having responsibility to facilitate harmonization of global standards and requirements in FDA's areas of responsibility. Examples of organizations whose officials may be given access to draft nonpublic documents are the Association of Food and Drug Officials (AFDO) and the Food and Agriculture Organization (FAO) of the United Nations.

The ability to exchange predecisional and preimplementation documents with the officials in question will facilitate harmonization of national and international regulatory requirements.

In every case, the proposed regulations (§§ 20.88(e)(1)(i) and 20.89(d)(1)(i)) require assurances from the receiving government that the information will be held in confidence. The proposed regulations (§§ 20.88(e)(1)(ii) and 20.89(d)(1)(ii)) further require the agency to determine that it is reasonably necessary to exchange the nonpublic documents to enhance Federal-State uniformity or to facilitate global harmonization of regulatory requirements, cooperative regulatory activities, or implementation of obligations resulting from international agreements. When these conditions are met, the agency believes that the records will be exempt from mandatory public disclosure under the FOIA.

C. FDA Believes the Deliberative Process Privilege Should Protect Certain Advice and Recommendations from Foreign and State Counterparts

The proposed amendments (§§ 20.88(e)(2) and 20.89(d)(2)) would establish that State and foreign government officials are not members of the public for purposes of exchange of certain nonpublic predecisional records, and that such exchanges will not invoke the requirements in § 20.21 of uniform access to records. FDA believes that records of advice and recommendations between government officials concerning public health and harmonization initiatives can be protected from mandatory disclosure under exemption 5 of the FOIA, 5 U.S.C. 552(b)(5). That exemption incorporates common law discovery privileges for intra- and interagency memoranda, including the deliberative process privilege asserted by government agencies to protect the process and quality of decisionmaking.

FDA believes it is appropriate to assert the deliberative process privilege in response to requests for public access

to certain communications from State and foreign government officials because the same policy reasons that support nondisclosure of deliberative and predecisional memoranda generated by Federal government agencies justify withholding, in many circumstances, the advice and recommendations generated for FDA by State and foreign government counterparts.

The agency's ability to make sound decisions about the development and implementation of public health and harmonization initiatives is enhanced by access to the advice and recommendations of experts in State and foreign governments who are engaged in similar efforts in their own jurisdictions. The agency views this kind of consultation as functionally equivalent to the ''intra-'' or ''interagency'' deliberation more commonly protected by exemption 5 of the FOIA. Indeed, it is frequently the case that advice from a State or foreign health official whose responsibilities parallel those of FDA officials concerning the feasibility of a particular technical or harmonization regulation will be as relevant as similar recommendations solicited from employees in other Federal government agencies.

In order to encourage the most candid and useful exchange of information in these circumstances, FDA believes it is essential to have discretion to protect from public disclosure the advice and recommendations it receives from State or foreign government officials. Again, the same policy considerations apply as would apply to intraagency deliberations: State and foreign government officials are at least as likely as Federal employees to be inhibited from giving frank advice when they know that opinion will be made public.

The principle that documents generated outside a government ''agency'' may still qualify for protection from public disclosure under exemption 5 of the FOIA has been endorsed by many courts. In recognizing the practical necessity that requires agency decisionmaking to depend on advice and opinions from sources beyond agency or Federal personnel, courts have adopted a ''functional'' test for assessing the applicability of exemption 5 protection, and included a variety of ''nonagencies'' within the threshhold definition of exemption 5 memoranda. (See, e.g., *Formaldehyde Institute* v. *HHS*, 889 F.2d 1118, 1123–1124 (D.C. Cir. 1989) (exemption 5's interagency threshold requirement applied to opinions solicited from outside scientific journal reviewers); *Ryan* v. *Department of Justice*, 617 F.2d 781, 790 (D.C. Cir. 1980) (exemption 5 applied to recommendations from Senators to Attorney General); *Mobil Oil Corp*. v. *FTC*, 406 F. Supp. 305, 315 (S.D.N.Y. 1976) (exemption 5 rationale applies to advice from State as well as Federal agencies). FDA believes the examples it has described in this document demonstrate that it is appropriate and necessary for FDA to be able to treat the exchange of advice and recommendations from foreign and State government officials as a functional part of the agency's deliberative process.

In addition to protecting certain advice and recommendations from State and foreign government officials which FDA utilizes in its decisionmaking processes, FDA also believes it should be able to cooperate with State and foreign government officials who request FDA input for deliberations within their own agencies.

Those State and foreign government agencies with which FDA most frequently consults operate, as does FDA, within laws that constrain their ability to share nonpublic information. In many circumstances, these agencies require assurances that FDA will not disclose to the public in response to a FOIA request certain information provided to FDA by a State or foreign govenment official. FDA has always been able to give such assurances with respect to proprietary or law enforcement information provided by State or foreign governments; under FDA's public information regulations, such information is subject to the same protection as if the information had been directly gathered or received by FDA. (See § 20.88(c)(1) and 20.89(a)). Indeed, FDA's regulations have for 20 years permitted the agency to provide additional assurances with respect to investigatory records that the State or foreign government will provide only upon assurance that protection will continue for some longer period of time. Id.

However, FDA has not been able to provide similar assurances of confidentiality with respect to nonpublic information provided to FDA by State or foreign governments that is of a deliberative nature, reflecting internal deliberations of that other government entity or predecisional drafts of records that are intended to implement public health initiatives on the part of counterpart State or foreign government agencies.

As discussed above, FDA believes that when such counterpart officials provide advice to FDA on issues and initiatives that FDA is deliberating, that advice is the functional equivalent of advice that would be provided by experts within the agency or by other Federal agency employees. Accordingly, under the amendments proposed to §§ 20.88 and 20.89, FDA would protect as interagency memoranda under exemption 5 of the FOIA the records it exchanged with foreign and State government health officials as part of FDA's efforts to reach a decision about initiatives it was considering. However, FDA believes the public health and FDA's relationships with foreign and State counterparts require that the agency be able to provide similar consultations to counterpart officials when it is those State or foreign government officials who request advice, and who require the exchange to remain nonpublic in order to protect their own deliberative processes. In most cases, because the foreign or State counterpart is providing FDA with information that is confidential commercial or investigatory information, FDA's published regulations permit FDA to protect those records from public disclosure. There have been situations, however, where a foreign government agency wishes to share with FDA a document that will not qualify for protection under the FOIA for proprietary or investigatory records, and which may not qualify under the deliberative process privilege discussed above because the decision that is being made is entirely within the jurisdiction of the foreign government counterpart. FDA believes international comity and the potential benefit to public health that may result from such consultations require the agency to attempt to honor such requests for confidentiality whenever it is possible to do so.

In circumstances where advice or information is provided by foreign governments pursuant to international agreements that provide for the nondisclosure of such exchanges, FDA believes the record generated by the foreign government and provided to FDA is not necessarily an ''agency record'' subject to FOIA and that FDA, therefore, might honor requests for confidentiality without contravening public disclosure requirements. The Supreme Court has delineated two broad tests for determining whether a document is an agency record for purposes of FOIA. The document: (1) Must be created or obtained by an agency, and (2) must be under the control of the agency when a FOIA request for the record is made. See *United States Department of Justice* v. *Tax Analysts*, 492 U.S. 136 (1989). When a foreign government shares

documents pursuant to agreements that require confidentiality before disclosure will be made, the record may not be under the ''control'' of FDA. In those circumstances where a treaty, agreement, or MOU between the United States and a foreign government requires confidentiality in order to encourage international consultation, FDA believes that control of the record may be governed by the treaty or agreement under which the foreign government health officials have shared the information with United States counterparts. Two recent opinions by Federal District Courts in the District of Columbia support this view. See *Katz* v. *National Archives & Records Administration*, No. 92–1024 (D.D.C. March 2, 1994), *reconsideration denied* (D.D.C. August 24, 1994) (appeal pending) (autopsy records not agency records because their disposition was governed by a Deed of Gift to National Archives); *KDKA–TV* v. *Richard Thornburgh, et. al*, No. 90–1536 (D.D.C. September 30, 1992) (reports in possession of National Transportation Safety Board not agency record because disclosure is governed by conditions of International Convention).

Similarly, FDA believes that in those rare instances where State governments initiate review of their own proceedings through consultation with FDA on conditions of confidentiality, FDA should be able to offer advice without jeopardizing public disclosure of records that would interfere with the deliberative processes of the State agency. FDA invites the submission of further information and views on this issue.

D. FDA's Proposals Will Not Reduce Public Access to Agency Records

FDA believes these proposals will do nothing to diminish current public access to agency records. The purpose of these proposed amendments is not to reduce the number or types of records that will be available to the public from FDA, but to enhance the agency's access to information exchanges that it currently is not able to undertake.

FDA fully supports the Attorney General's Memorandum of October 4, 1993, establishing new standards of government openness, and FDA intends to apply a ''foreseeable harm'' standard when applying FOIA exemptions. Under this policy, government agencies are guided by the principle that exempt information should not be withheld from a FOIA requester unless it need be. FDA reiterates that the nonpublic exchange of information with State and foreign government counterparts will not be a routine occurrence; the proposed regulations, which require specific assurances from the receiving official and a determination on the part of FDA that the exchange is necessary, establish rigorous prerequisites.

FDA has no intention of protecting from public disclosure any information it shares with foreign or State counterparts that may be disclosed to the public without harm to any private or government interests. Nor does FDA believe that all State or foreign counterparts will desire or require FDA to protect information they provide to this agency. However, the agency also believes that its current public information regulations are too rigid for effective exchange of information in a national and increasingly international economy. These proposals reflect FDA's determination that its public health mission has been hampered in certain circumstances by the inability to exchange nonpublic information with counterpart officials. The agency believes the proposed changes have been drafted narrowly and with sufficient safeguards to allow FDA to exchange nonpublic information when necessary without damage to either proprietary interests or appropriate public access to agency records.

As stated earlier, any information provided by State or foreign government officials upon which FDA is relying will be included in published proposals. At that time, the general public will be fully informed and have an opportunity to comment on the substance of any advice from foreign or State officials that is incorporated into agency proposals or initiatives.

III. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this proposed rule promotes harmonized regulatory requirements, nationally and internationally, thereby reducing disparate regulatory requirements, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

V. Comments

Interested persons may, on or before April 27, 1995, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. to 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 20

Confidential business information, Courts, Freedom of information, Government employees.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 20 be amended as follows:

PART 20—PUBLIC INFORMATION

1. The authority citation of 21 CFR part 20 is revised to read as follows:

Authority: Secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–393); secs. 301, 302, 303, 307, 310, 311, 351, 352, 354–360F, 361, 362, 1701–1706, 2101 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b–263n, 264, 265, 300u–300u–5, 300aa–1); 5 U.S.C. 552; 18 U.S.C. 1905; 19 U.S.C. 2531–2582.

2. Section 20.88 is amended by adding new paragraphs (d) and (e) to read as follows:

§ 20.88 Communications with State and local government officials.

* * * * *

(d)(1) The Commissioner of Food and Drugs, or any other officer or employee of the Food and Drug Administration

whom the Commissioner may designate to act on his or her behalf for the purpose, may authorize the disclosure of confidential commercial information submitted to the Food and Drug Administration, or incorporated into agency-prepared records, to State government officials as part of cooperative law enforcement or regulatory efforts, provided that:

(i) The State government agency has provided both a written statement establishing its authority to protect confidential commercial information from public disclosure and a written commitment not to disclose any such information provided without the written permission of the sponsor or written confirmation by the Food and Drug Administration that the information no longer has confidential status; and

(ii) The Commissioner of Food and Drugs or the Commissioner's designee makes one or more of the following determinations:

(A) The sponsor of the product application has provided written authorization for the disclosure;

(B) Disclosure would be in the interest of public health by reason of the State government's possessing information concerning the safety, effectiveness, or quality of a product or information concerning an investigation, or by reason of the State government being able to exercise its regulatory authority more expeditiously than the Food and Drug Administration; or

(C) The disclosure is to a State government scientist visiting the Food and Drug Administration on the agency's premises as part of a joint review or long-term cooperative training effort authorized under section 708 of the act, the review is in the interest of public health, the Food and Drug Administration retains physical control over the information, the Food and Drug Administration requires the visiting State government scientist to sign a written commitment to protect the confidentiality of the information, and the visiting State government scientist provides a written assurance that he or she has no financial interest in the regulated industry of the type that would preclude participation in the review of the matter if the individual were subject to the conflict of interest rules applicable to the Food and Drug Administration advisory committee members under § 14.80(b)(1) of this chapter. Subject to all the foregoing conditions, a visiting State government scientist may have access to trade secret information, entitled to protection under section 301(j) of the act, in those cases where such disclosures would be a necessary part of the joint review or training.

(2) Except as provided under paragraph (d)(1)(ii)(C) of this section, this provision does not authorize the disclosure to State government officials of trade secret information concerning manufacturing methods and processes prohibited from disclosure by section 301(j) of the act, unless pursuant to an express written authorization provided by the submitter of the information.

(3) Any disclosure under this section of information submitted to the Food and Drug Administration or incorporated into agency-prepared records does not invoke the rule established in § 20.21 that such records shall be made available to all members of the public.

(e)(1) The Commissioner of the Food and Drugs, or any other officer or employee of the Food and Drug Administration whom the Commissioner may designate to act on his or her behalf for the purpose, may authorize the disclosure to, or receipt from, an official of a State government agency of nonpublic predecisional documents concerning the Food and Drug Administration's or the other government agency's regulations or other regulatory requirements, or other nonpublic information relevant to either agency's activities, as part of efforts to improve Federal-State uniformity, cooperative regulatory activities, or implementation of Federal-State agreements, provided that:

(i) The State government agency has provided both a written statement establishing its authority to protect such nonpublic documents from public disclosure and a written commitment not to disclose any such documents provided without the written confirmation by the Food and Drug Administration that the documents no longer have nonpublic status; and

(ii) The Commissioner of Food and Drugs or the Commissioner's designee makes the determination that the exchange is reasonably necessary to improve Federal-State uniformity, cooperative regulatory activities, or implementation of Federal-State agreements.

(2) Any exchange under this section of nonpublic documents does not invoke the rule established in § 20.21 that such records shall be made available to all members of the public.

(3) For purposes of this paragraph, the term ''official of a State government agency'' includes an employee of an organization of State officials having responsibility to facilitate harmonization of State standards and requirements in FDA's areas of responsibility. For such an official, the statement and commitment required by paragraph (e)(1)(i) of this section shall be provided by both the organization and the individual.

3. Section 20.89 is amended by adding new paragraph (d) to read as follows:

§ 20.89 Communication with foreign government officials.

* * * * *

(d)(1) The Commissioner of Food and Drugs, or any other officer or employee of the Food and Drug Administration whom the Commissioner may designate to act on his or her behalf for the purpose, may authorize the disclosure to, or receipt from, an official of a foreign government agency of nonpublic predecisional documents concerning the Food and Drug Administration's or the other government agency's regulations or other regulatory requirements, or other nonpublic information relevant to either agency's activities, as part of cooperative efforts to facilitate global harmonization of regulatory requirements, cooperative regulatory activities, or implementation of international agreements, provided that:

(i) The foreign government agency has provided both a written statement establishing its authority to protect such nonpublic documents from public disclosure and a written commitment not to disclose any such documents provided without the written confirmation by the Food and Drug Administration that the documents no longer have nonpublic status; and

(ii) The Commissioner of Food and Drugs or the Commissioner's designee makes the determination that the exchange is reasonably necessary to facilitate global harmonization of regulatory requirements, cooperative regulatory activities, or implementation of international agreements.

(2) Any exchange under this section of nonpublic documents does not invoke the rule established in § 20.21 that such records shall be made available to all members of the public.

(3) For purposes of this paragraph, the term ''official of a foreign government agency'' includes, an employee of an international organization having responsibility to facilitate global harmonization of standards and requirements in FDA's areas of responsibility. For such an official, the statement and commitment required by paragraph (d)(1)(i) of this section shall be provided by both the organization and the individual.

Dated: January 23, 1995.
William K. Hubbard,
Interim Deputy Commissioner for Policy.
[FR Doc. 95–2111 Filed 1–26–95; 8:45 am]
BILLING CODE 4160–01–F

Friday
January 27, 1995

Federal Register

Part VI

Office of Personnel Management

5 CFR Parts 430, 432, 451 and 531
Performance Management; Proposed Rule

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 430, 432, 451 and 531

RIN 3206–AG34

Performance Management

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing proposed regulations to deregulate performance management and incentive awards, including provisions allowing agencies to use as few as two levels for critical element appraisals and summary ratings for non-SES employees, and to make conforming changes to related regulations. These changes are proposed to provide agencies additional flexibility as called for by the National Performance Review.

DATES: Comments must be submitted on or before March 28, 1995.

ADDRESSES: Comments may be sent or delivered to: Allan D. Heuerman, Assistant Director for Labor Relations and Workforce Performance, U.S. Office of Personnel Management, Room 7412, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Barbara Colchao, (202) 606–2720.

SUPPLEMENTARY INFORMATION: To pursue the flexibility and decentralization called for by the National Performance Review (NPR), OPM proposes amending its regulations to remove many of the current regulatory requirements and permit agencies to implement performance management systems and programs for non-SES employees that better fit their organizational climate and needs. (OPM is conducting a separate review of SES performance appraisal regulations.) These proposed changes are intended to increase system flexibility and not to suggest the superiority of the newly available options. OPM advises agencies to examine their individual circumstances carefully before making any major changes to their performance management systems and programs.

Partnership and Successful Performance Management

Agencies are strongly urged to develop their performance management systems and programs in partnership with their employees and union representatives in accordance with law. Many studies have shown that the success of a performance management system in achieving its goals is dependent upon acceptance by the management and employees who use it. There is no better way to garner support for a system than by giving all stakeholders a role in developing it. Further, the National Performance Review stated in its accompanying report, Reinventing Human Resource Management, that under the ideal performance management system ''Employees and their representatives will be involved in design and implementation of performance management programs and in development of performance expectations.'' Consequently, OPM advises agencies that these regulatory changes in performance management should be implemented through full partnership with employees and their union representatives.

Performance Management Systems and Programs

The recommendations of the National Performance Review for reforming the Government's performance management system contemplated a policy environment that would permit ''complete decentralization of performance management within a framework of broad, governmentwide principles.'' OPM is establishing that framework in these proposed regulations for appraisal and awards, which would remove many previous regulatory constraints and implement flexible Governmentwide systems for appraisal and awards. This approach will permit the implementation of the NPR recommendation for the development of agency-based performance management and incentive award programs tailored to meet each agency's unique needs.

The law governing performance appraisal provides that agencies must establish one or more appraisal systems, and that OPM must review and approve an agency's system(s). OPM is proposing to define an agency appraisal system as the agency's framework of policies and parameters (i.e., guidelines, boundaries, limits) for the administration of performance appraisal. (See § 430.204.) Although an agency would be authorized to establish more than one system, OPM anticipates that most agencies will not find it necessary to do so. OPM goes on to propose that within that OPM-approved framework, an agency would be free to establish and adapt one or more appraisal programs of specific procedures and requirements. (See § 430.205.)

Consequently, when an agency has determined it can more effectively meet the objectives for performance management to improve individual and organizational performance by establishing different specific performance appraisal procedures and requirements tailored to the mission, work technology, and/or employees of its organizational subcomponents or for subsets of positions, the proposed regulations would authorize the agency to develop appropriate, separate appraisal programs under the framework of its appraisal system.

Deregulating Performance Management

OPM is proposing implementation of NPR recommendations for flexible, decentralized performance management through deregulation of appraisal and awards. That deregulation would be achieved in at least three ways.

First, the regulations have been reviewed to eliminate unnecessary or redundant requirements. A number of requirements had been set forth in regulation, but were not required by statute. Many of these that have come to be unnecessarily constraining or burdensome (e.g., specifying required procedures for employees on details, requiring an SF–50 for a time-off award) would be eliminated. On the other hand, several regulations that merely repeat requirements that are already clearly stated in statute would also be eliminated. In these instances, of course, the statutory requirements will still be in effect.

Second, a number of regulatory requirements would be removed, not because they were necessarily ineffective or redundant, but because agencies should be free to use them without being required to use them. For example, the proposal to eliminate the requirement for second-level review of performance plans should not be taken as an indication that OPM has concluded that second-level review is a bad idea. In many instances, the reverse is true. However, OPM is proposing to achieve a shift in policy perspective under which an agency's use of second-level review in its performance management programs would reflect the agency's program design choice rather than compliance with a Governmentwide regulatory requirement. A similar situation can be found in OPM's proposal to eliminate most restrictions on the use of time-off awards. Many agencies may choose to retain some limits, and they would be free to do so.

Another example of this form of deregulation that would implement an authority without establishing a requirement is OPM's proposal to delete subpart E (Performance Awards) of part 430 and integrate provisions for rating-based cash awards into part 451

(Awards). This would consolidate the regulatory structure and clarify that rating-based cash performance award programs are an option that agencies are authorized—but not required—to use.

Finally, deregulation would result from modifying OPM's review of agency systems. An agency's appraisal system, or overall policy framework, would still be reviewed and approved, as required by law, for compliance with regulatory requirements. However, the scope of that review would be limited to that required by law, and there would be fewer regulatory requirements to review. The proposed regulation returns the Governmentwide regulatory scheme for performance management to the decentralized approach initially taken in implementing the Civil Service Reform Act of 1978. The highly detailed regulatory requirements that OPM is proposing to modify date to the mid-1980's, a time when there was a strong policy interest in achieving Governmentwide uniformity. Experience has provided substantial evidence that the ''one size fits all'' approach does not support effective performance management and needs to be changed.

Reinventing Performance Management

In addition to reducing the amount of regulation, OPM is proposing regulatory revisions to facilitate applying performance management regulations to improving individual and organizational performance. The language and context of existing regulation is centered strongly in a model of individual performance and recognition. The language, context, and focus of effective performance management practice have altered substantially in recent years. Many organizations have benefitted from a shift to focusing on the group or team performance level. Such a shift can greatly improve the credibility and utility of appraisal and award processes and outcomes for achieving the objective of improving organizational performance and mission accomplishment.

The current regulations stem from a model of appraisal based more on process inputs and the duties and responsibilities in an employee's individual position description and less on the results and accomplishments for which that employee is accountable. Experience has shown that those results and accomplishments are often more reasonably and meaningfully described, and certainly measured, at the group or team level. One objective in OPM's revision of appraisal and award regulations is to ensure that they could be applied to managing group performance. Consequently, many proposed revisions would remove language (e.g., ''employee'' and ''position'') that narrowed the regulation's focus to individual performance. Several appraisal-related terms would be retained (e.g., appraisal, critical element, performance), but their definitions modified to accommodate this broader context.

OPM's goal is to establish a regulatory scheme that would operate effectively at the individual and the team or group level. An agency would still be able to design and operate its programs entirely at the individual level. Establishing and maintaining individual accountability and taking appropriate actions to deal with poor performers must remain significant aspects of the Government's performance management system. Therefore, the regulations would continue to require that each employee have a performance plan, and OPM is proposing to require that each plan must include at least one critical element that addresses individual performance. (See § 430.206(b)(4).)

In addition to making changes to accommodate group performance, OPM is proposing some revisions to the regulatory structure that are intended to refocus attention away from the once-a-year summary rating aspects of performance appraisal procedures and back toward the processes involved in communicating performance expectations and providing ongoing feedback. To that end, OPM is proposing to establish separate sections within the appraisal subpart of part 430 that focus on:

—Planning performance, (See § 430.206.)
—Monitoring performance, (See § 430.207.)
and
—Rating performance at the end of an appraisal period or cycle. (See § 430.208.)

The definition and requirements for a performance plan would be broad enough to accommodate including other expressions of performance expectations in addition to establishing elements and standards. (See § 430.203 and § 430.206(b)(5).) This would facilitate agencies integrating other performance planning processes with their appraisal programs (for example, by including factors from performance contracts, performance goals and targets, published customer service standards, organization-level performance plans established under the Government Performance and Results Act of 1993, etc.). The proposed regulations seek only to establish clearly that agencies would be free to integrate such planning tools and products and do not establish specific requirements or procedures for doing so. Such factors could be considered, for example, in designing incentive award schemes and distributing rewards and recognition. However, such factors could not be used as the basis for initiating a performance-based action, which requires a determination that performance on a critical element is ''Unacceptable.''

Another area where OPM is proposing a broader context is the process for deriving a summary rating. Although OPM is proposing to permit as few as two summary rating levels (see below), it is also anticipated that agencies will continue to have an interest in making and recording further distinctions among the vast majority of employees who meet basic performance expectations. OPM is proposing regulations that would give agencies more flexibility in deriving and assigning summary rating levels. For example, agencies would be able to—but not required to—consider other performance-related factors beyond appraisal of employee or group performance on critical elements. (See § 430.208(b).) Examples of such other factors include:

—Components from a performance plan such as meeting work plan objectives or group performance goals that had not been specifically framed as critical elements,
—A record of receiving awards for superior performance,
—A record of documented productivity gains,
—A non-critical element included in the performance plan to communicate an expectation and standards that, if met, could raise a summary rating above Level 3 (''Fully Successful'' or equivalent).

In addition, OPM is proposing to give agencies the flexibility to use forced distributions of summary ratings above Level 3 (''Fully Successful'' or equivalent), but only where those summary ratings above that level are not derived solely based on a comparison of performance against predetermined standards. An example of such a scheme would be to use performance-related criteria to rank the employees whose critical elements are all appraised as at least ''Fully Successful'' and assign the highest rating level to a limited number of employees. It should be noted that the effectiveness and acceptance of such a scheme would rest largely on the credibility and equity of the processes and criteria used to rank the employees.

Nevertheless, OPM is proposing to offer agencies this flexibility. If performance standards defining the higher levels had been established, an agency would be prohibited from prescribing a distribution of ratings. (See § 430.208(c).)

Within the awards arena of performance management, reinventing the system of Governmentwide policies for recognition and reward programs would be achieved by integrating rating-based cash performance award provisions into the same regulatory part as other awards and by simplifying those regulatory provisions. This would have the effect of giving agencies a framework of broad, flexible principles for designing and administering decentralized award programs, consistent with NPR recommendations. Within those broad principles, agencies would be free to design and operate a wide variety of tailor-made incentive and recognition programs at the individual and group level, including most of the alternative reward, variable pay, and pay-for-performance schemes that can contribute to improving individual and organizational performance.

Number of Summary Rating Levels

OPM is proposing to permit agencies to use as few as two levels for summary performance ratings. Among summary rating levels, agencies would be required to include a Level 1 (''Unacceptable'') and a Level 3 (''Fully Successful'' or equivalent). If more than two summary rating levels were used, the agency could choose any combination from the remaining three levels (i.e., Level 2, Level 4, and Level 5). Agencies also would continue to be permitted to use equivalent terms for ''Fully Successful'' and/or ''Outstanding.'' (See § 430.208(d).)

Using the five possible summary rating-level designators established at § 430.208(d), the following table illustrates the various patterns of levels available.

Number of summary rating levels in program	Summary rating level designator from new § 430.208(d)				
	Level 1 (''unacceptable'')	Level 2	Level 3 (''fully successful'')	Level 4	Level 5 (''outstanding'')
Two	X	.....	X	.....	.....
Three:					
Option 1	X	.....	X	.....	X
Option 2	X	.....	X	X	.....
Option 3	X	X	X	.....	.....
Four:					
Option 1	X	.....	X	X	X
Option 2	X	X	X	.....	X
Option 3	X	X	X	X	.....
Five	X	X	X	X	X

Permitting the use of only two summary rating levels would not require a change in the rules governing additional service credit for performance in determining an employee's retention standing for RIF purposes since an appraisal program with only two summary rating levels would be required to use Level 3 (''Fully Successful'' or equivalent) to summarize acceptable performance. As set forth in 5 CFR 351.504(d)(3), an employee would receive ''Twelve additional years of service credit for each performance rating of fully successful (Level 3) or equivalent.''

Number of Levels for Appraising Elements

OPM is proposing to permit agencies to use as few as two levels at which to appraise performance on the elements in employee performance plans. At a minimum, it must be determined whether performance is ''Fully Successful'' (or equivalent) or ''Unacceptable'' when appraised against established performance standards. Agencies would still be required to establish performance standards at the ''Fully Successful'' (or equivalent) level for critical and non-critical elements. Also, agencies would continue to be permitted to determine performance to be at a level that has no established performance standard but which has been provided for by the applicable performance appraisal program. (See § 430.206(b)(6).)

Regulatory Changes in Awards

OPM is also proposing to revise regulations so that the requirements governing all types of awards for non-SES employees would be in part 451 of chapter 5 of the Code of Federal Regulations. The proposed regulations provide for a few basic requirements within which agencies can design award programs to meet their individual cultures and needs.

The language throughout these regulations has been reviewed for its use of the term ''incentive award(s).'' For many years since the inception of the consolidated awards authority for Federal employees in 1954, the term ''incentive'' was used broadly to cover all types of awards including those that are granted retrospectively at management discretion to recognize past contributions, such as special acts or suggestions. As awards theory and practice have developed in recent years, however, ''incentive'' typically is applied somewhat more restrictively to award programs, such as productivity gainsharing and performance goalsharing schemes, that are designed to specify clearly in advance what recognition and reward will be granted based on a given contribution. Programs such as these have demonstrated their effectiveness for improving performance. At the same time, awards that recognize past contributions not specified in advance beyond some general criteria remain an appropriate and effective use of the authority to grant awards.

There is no strict definition or distinction for the term ''incentive'' that can be established or applied. Nevertheless, to recognize trends in awards theory and practice, OPM is proposing to use only the term ''award(s)'' in the broad regulations that cover both the prespecified and the retrospective uses of the awards authority and limit use of the term

''incentive'' in the regulations to situations where the relationship between contribution and award is clearly specified in advance.

OPM is proposing to remove the separate subpart (subpart E) within part 430 governing the use of rating-based cash performance awards and to integrate a minimum number of essential provisions into subpart A of part 451. (See §§ 451.104(a)(3), 451.104(b) & (g), and 451.106(b), (f) & (g).) OPM is also proposing to delete the separate subpart (subpart C) within part 451 governing the use of time-off awards and to integrate time-off awards within the more general award provisions. (See §§ 451.104(a) and 451.104(e).)

OPM is proposing new regulations to implement new statutory provisions at 5 U.S.C. 4508 and 4509 concerning restrictions on awards for senior political appointees. (See § 451.105.) In addition, OPM is proposing a new regulation that alerts agencies that when designing award programs under this authority, they must ensure that award schemes, especially those based on achievements other than those directly related to an employee's performance plan, will not violate any other statute or Governmentwide regulation. (See § 451.106(a).)

Within-Grade Increase Flexibilities

OPM is proposing an agency-requested flexibility to permit the delay of the acceptable level of competence (ALOC) determination required for granting a within-grade increase when an employee has begun an opportunity period or has been given a notice of a proposed performance-based action. This option to delay an ALOC in no way restrains an agency from establishing a policy to deny a within-grade increase to an employee whose performance or rating of record supports such a denial. Furthermore, in those agencies that choose to continue using a Level 2 (''Minimally Successful'' or equivalent) summary rating level, exercising the delay option would create an inequity between the minimally acceptable and unacceptable employee in that the unacceptable employee would be given additional time to achieve ALOC. (See § 531.409(c)(2).)

Another proposed flexibility would cover situations where agencies have employees who are authorized to perform activities of official interest to the agency (e.g., labor-management partnership activities under section 2 of Executive Order 12871, serving as a representative of a labor organization, etc.), but are not able to perform under elements and standards (and, therefore, the agency is unable to provide a rating of record). OPM is proposing to permit the agency to waive the requirement for an ALOC determination and grant within-grade increases upon completion of the applicable waiting period. This waiver option recognizes that such employees have not had a sufficient opportunity to perform under their assigned elements and standards due to the other authorized activities and supposes that such performance would have been at least ''Fully Successful'' had it occurred. (See § 531.409(d)(5).)

Eligibility for Quality Step Increases

Agencies are required by Executive Order 11721 to establish plans for granting additional step increases to employees on the basis of high quality performance. Current regulation at § 531.504 establishes that a Level 5 (''Outstanding'' or equivalent) rating is required for granting such a quality step increase (QSI). OPM recognizes that agencies that choose to adopt two summary rating levels or to not include a Level 5 summary rating level would not be able to grant a QSI under current regulation, and thereby satisfy the requirements of Executive Order 11721. Consequently, OPM proposes to amend its pay regulations to permit an employee under an appraisal program without a Level 5 summary rating level to be eligible for a QSI based on demonstrating sustained performance that is significantly higher than that expected at the ''Fully Successful'' level. Agencies would be required to establish performance-related criteria for QSI eligibility consistent with this requirement. (See § 531.504.)

Appraisal System Transition

OPM is proposing a regulatory provision that would assist agencies as they develop and implement new appraisal systems and programs under new regulatory flexibilities. At the time that new regulatory requirements and provisions become effective, it is essential to support a smooth transition especially for agencies that might be pursuing a pending administrative action initiated under the systems that exist now. The regulatory provision would clarify that any appraisal system that had been reviewed and officially approved by OPM as of the effective date of the revised regulations would be considered an approved system under the revised regulations until such time as changes to the system are approved. This will permit agencies to pursue pending actions and to continue to operate their existing appraisal systems and initiate other actions based on appraisal results. (See § 430.201(b).)

Agencies should note that these regulatory changes establish no requirements or deadlines to make appraisal system changes. The flexibility the proposed regulations would achieve includes the flexibility to continue agency appraisal policies, procedures, and requirements that are already in use. OPM is proposing no regulatory provision that would create a regulatory conflict for any appraisal system already approved under current regulation.

OPM would provide guidance to agencies on requirements and procedures for submitting system descriptions to OPM for review and approval.

Major Proposed Changes to Performance Management Regulations

OPM also is proposing to amend its regulations in other ways to provide additional flexibilities, eliminate burdensome requirements, establish new provisions, and make conforming and editorial changes. The following list summarizes the substantive changes, including those discussed above.

Added Flexibilities and Reduced Requirements

1. Permits agencies to use as few as two performance levels for appraising elements.
2. Permits agencies to use as few as two levels for summary performance ratings.
3. Removes the requirement for OPM approval of plans for awards, quality step increases, and within-grade increases, but retains statutory requirement that OPM approve performance appraisal systems.
4. Permits recording of performance plans, ratings, etc., in formats other than paper.
5. Deletes the requirement for higher-level review of performance plans.
6. Replaces the requirement that agencies assist employees with performance below Fully Successful with the statutory requirement to assist with performance that is Unacceptable.
7. Replaces the total prohibition on forced distributions of summary ratings with prohibitions limited to summary ratings below Level 3 or situations where summary ratings are based solely on appraisal against pre-established performance standards.
8. Deletes the requirement that a rating of record under one pay system be used as the rating of record under a new system when there is no change in duties or responsibilities.
9. Deletes the requirement for agencies to prepare a summary rating when an employee changes position and

to specify how such a rating is to be taken into account when preparing a rating of record.

10. Deletes fixed limits (90 to 120 days) on the length of the minimum appraisal period, and replaces them with a requirement that a minimum period be established.

11. Deletes specific requirements for rating employee performance while on detail and replaces them with a requirement that an agency appraisal program address appraisal while on detail.

12. Deletes the general requirement for higher-level approval of a rating of record and replaces it with a requirement that only ''Unacceptable'' summary ratings be approved at a higher level.

13. Replaces the requirement for training supervisors and employees on the appraisal process with a requirement to communicate about relevant parts of the system and programs.

14. Deletes subpart E (Performance Awards) of part 430 and incorporates some performance awards provisions into part 451 (Awards).

15. Deletes the recommendation to make maximum use of awards authority.

16. Replaces the requirement to document awards in the OPF with a provision for agencies to establish criteria to determine which awards to document in the OPF.

17. Replaces the requirement for higher-level review of awards with a requirement to follow agency financial management control procedures.

18. Deletes the requirements for an SF–50 for a time-off award and for annual reports on performance awards and awards program activity, and replaces them with a requirement to report data on all cash and time-off awards to the CPDF.

19. Deletes the provision that awards cannot be used as substitutes for pay or other personnel actions.

20. Deletes most regulatory provisions and requirements regarding time-off awards, but retains the provision that prohibits converting a time-off award to cash.

New Provisions

1. A distinction is made between an agency system (agencywide policy and parameters) and an agency program (specific procedures, forms, standards, etc.).

2. Agencies are encouraged to involve employees and their representatives in the development of award and appraisal systems and programs.

3. Key definitions and provisions have been broadened to explicitly include teams.

4. Provision to maintain applicability of appraisal systems already reviewed and approved by OPM is added.

5. At least one element in a performance plan must address individual performance.

6. Agencies are to ensure that any award program they develop does not conflict with any other applicable law or regulation.

7. OPM is authorized to grant agency requests to extend 5 U.S.C. 4505a to non-General Schedule employees as provided by Executive Order 12828.

8. The provision that a rating-based cash performance award cannot be appealed is clarified to include all awards.

9. The statutory restrictions on granting awards to senior political officials is added.

10. Agencies are to use the OPM Guide to Federal Workforce Reporting Systems when reporting data.

11. OPM is authorized to evaluate agency award programs.

12. A provision permitting an agency to delay an ALOC determination if the employee is in an opportunity period or notice period is added.

13. A provision permitting an agency to waive the ALOC determination for employees who have been unable to perform under elements and standards because they spent 100% of their time on activities of official interest to the agency is added.

14. An agency that does not use the ''Outstanding'' (Level 5) summary rating level will be permitted to establish performance-related criteria and grant a quality step increase to an employee who demonstrates significantly high quality performance.

Table of Changes

The following table lists all the proposed changes to the current regulation, including those discussed above.

—In the left column, the table lists all current regulations in parts 430 and 451 and current regulations in parts 432 and 531 that are impacted by the proposed regulations.

—In the middle column, the table lists the proposed regulations that track the provisions of the current regulations in the left column.

—In the right column, the table explains the changes in provisions from the current regulation in the left column to the proposed regulation in the middle column.

Current rule	Proposed rule	Description of change
§ 430.101	§ 430.101	Proposed rule removes citation of incentive award and pay statutes because they no longer apply.
§ 430.102	§ 430.102(a)	Proposed rule redefines performance management to reorient the definition to team settings and goals of the National Performance Review (NPR).
§ 430.103	§ 430.102(c)	Proposed rule redescribes the Performance Management Plan; removes the requirement for OPM approval of plans for awards, quality step increases, and within-grade increases; the requirement for final approval of component plans by OPM; and reference to the Performance Management Plan Checklist to provide greater agency flexibility and to reflect OPM's scope of review.
	§ 430.209 (a) & (f)	Proposed rule revises and redesignates the provision requiring submission of appraisal system(s), system changes, and records to OPM to reflect OPM's scope of review.
§ 430.201(a)	§ 430.201(a)	Proposed rule makes editorial changes to section addressing statutory authority to eliminate nonessential information.
	§ 430.201(b)	Proposed rule adds provision to maintain applicability of performance appraisal systems already reviewed and approved by OPM.
§ 430.201(b)	§ 430.102(b)	Proposed rule revises language that specifies objectives of performance appraisal systems to specify objectives of performance management and to add references to teams.
§ 430.202(a)	§ 430.202(a)	Proposed rule attaches to ''General Schedule'' a parenthetical reference to ''GS/GM'' to accommodate termination of the Performance Management and Recognition System.
§ 430.202(b)	§ 430.202(b)	Proposed rule deletes requirements regarding the statutory authority under which agencies may exclude temporary employees to increase agency flexibility.

Current rule	Proposed rule	Description of change
§ 430.202(c)	§ 430.202(c)	Proposed rule substitutes a ''minimum period established by the agency'' for the fixed ''120 calendar days'' as the minimum period of time a position is not reasonably expected to exceed to be excluded from coverage for the purpose of increasing agency flexibility.
§ 430.202(d)	§ 430.202(d)	No change.
§ 430.203	§ 430.203	*Appraisal* is broadened to allow more flexibility. *Appraisal period* is revised to reinforce the expectation that appraisal periods generally last one year and to establish them as the basis for ratings of record. *Appraisal program* is added to distinguish specific appraisal procedures and requirements from agencywide appraisal policies and parameters established for the administration of performance appraisal within the agency. *Appraisal system* is revised to clarify that it refers only to an agencywide framework for appraisal policy and to remove references to various system requirements that would no longer apply. *Critical element* is broadened to facilitate using performance planning to communicate expectations, especially in team settings, by removing classification-centered references to duties and responsibilities of the position. *Non-critical element* is deleted because it is not needed. *Performance* is revised to broaden the definition, to reference work responsibilities as well as assignments, and to remove the classification-centered reference to a position to better accommodate team settings. *Performance Appraisal System* is retained without change. *Performance Management Plan* is deleted because it is described in subpart A already. *Performance plan* is revised to reorient the definition to team settings and NPR goals and to permit the performance plan to be recorded in formats other than paper. *Performance rating* is added to replace the definition of ''summary rating'' which is no longer needed, to permit the performance rating to be recorded in formats other than paper, and to acknowledge that non-critical elements are optional. *Performance standard* is revised to remove language that implies that management should develop standards without employee input and to improve clarity. *Progress review* is revised to emphasize communication and the legitimacy of team elements and standards. *Rating* is deleted because it is not needed. *Rating of record* is revised to refer to ''performance rating'' instead of ''summary rating,'' to include the assignment of a summary rating level, to remove reference to the Performance Management Plan, to specify that the rating of record generally applies to performance over the entire appraisal period, and to specify that all references to official ratings, performance ratings, and ratings of record in title 5 of the Code of Federal Regulations refer to this definition. The purpose of these changes is to clarify the rating process and provide greater flexibility. *Summary rating* is deleted and replaced by a new term, ''performance rating,'' and language in the ''rating of record'' definition (see above) to clarify the rating process and provide greater flexibility.
§ 430.204(a)	§ 430.204(a)	No change.
	§ 430.204(b)	Proposed rule adds new provision to require agencies to establish agencywide policies and parameters and sets forth minimum requirements for a system to reflect OPM's scope of review.
	§ 430.204(c), § 430.204(d)	Proposed rule adds new provision to encourage employee involvement in system and program development to reflect team settings and NPR goals.
	§ 430.205(a)	Proposed rule adds new provision that requires agencies to develop at least one appraisal program within the scope of agency systems to specify procedures and requirements to operate the performance appraisal system.
	§ 430.205(c)	Proposed rule adds new provision that permits the development of separate appraisal programs to implement decentralized performance appraisal.
§ 430.204(b)	§ 430.206(b)(3), § 430.207(b), § 430.208(a)	Proposed rule revises and redesignates provisions requiring performance plans, appraisals, and summary ratings; and permits formats other than paper for recording performance plans to clarify the rating process and provide greater flexibility.
§ 430.204(c)	§ 430.206(b)(1)	Proposed rule retains provision for employee participation in establishing performance plans, deletes reference to examples of employee participation in establishing performance plans to eliminate nonessential information, and deletes the provision that supervisory officials have ultimate authority to establish such plans to accommodate team settings and support NPR goals.
§ 430.204(d)(1)	§ 430.206(b)(2)&(3)	Proposed rule revises and redesignates the provisions for job-related performance plans provided at the beginning of the appraisal period to clarify the rating process.
	(b)(4)	Proposed rule adds new provision to ensure that at least one element addresses individual performance.
§ 430.204(d)(2)	§ 430.206(b)(5)	Proposed rule revises and redesignates the provision for the inclusion of organizational objectives in performance plans to provide for team setting and support NPR goals.
§ 430.204(e)	§ 430.206(b)(6)	Proposed rule permits agencies to use as few as two levels to appraise elements to provide greater flexibility (see section in supplementary information above), and continues requirement for Fully Successful standard and ability to appraise at levels without explicit standards.
§ 430.204(f)	§ 430.206(b)(6)(ii)	Proposed rule revises and redesignates requirement for written performance standard and deletes requirement for higher-level review of performance plans to provide greater flexibility.

Current rule	Proposed rule	Description of change
§ 430.204(g)	§ 430.208(b)	Proposed rule revises and redesignates the requirement for a summary rating method and provides added flexibility in deriving summary rating levels.
§ 430.204(h)	§ 430.208(d)	Proposed rule permits agencies to use as few as two summary rating levels (Unacceptable and Fully Successful) (see section in supplementary information above) and permits use of other levels to provide greater flexibility.
§ 430.204(i)	§ 430.208(d) § 430.209(3).	Proposed rule simplifies regulatory text and replaces the outdated reference to the Federal Personnel Manual with a reference to the current OPM Guide to Federal Workforce Reporting Systems.
§ 430.204(j)	§ 430.207(c)(1)	Proposed rule clarifies that agencies are required to assist employees with ''Unacceptable'' performance and deletes examples of assistance to remove nonessential information.
§ 430.204(k)	§ 430.207(c)()	Proposed rule simplifies language addressing unacceptable performance to delete information stated elsewhere in regulation (performance-based action can be taken either under procedures established in part 432 or part 752, subpart D).
§ 430.204(1)		Proposed rule deletes provision requiring ratings of record under one pay system to be used as ratings of record under a new pay system when there is no change in the duties and responsibilities of the position to provide greater flexibility.
§ 430.204(a)	§ 430.206(a)	Proposed rule revises and redesignates the requirement for appraisal period and removes the requirement for agencies to prepare a summary rating when an employee changes position and to specify how these are taken into account when preparing ratings of record to clarify the rating process and provide greater flexibility.
§ 430.205(b)	§ 430.207(a)	Proposed rule deletes fixed limits on the length of minimum appraisal periods to provide greater flexbility.
§ 430.205(c)	§ 430.207(b)	Proposed rule makes editorial changes to provisions regarding appraising performance on each element and progress reviews to increase emphasis on communication.
§ 430.205(d)	§ 430.205(b)	Proposed rule replaces requirement to rate employee performance while on detail with requirement that programs address the issue to provide greater flexibility.
§ 430.205(e)	§ 430.207(b)	Proposed rule revises and redesignates the requirement for a progress review to increase emphasis on communication.
§ 430.205(f)	§ 430.208(f)	Proposed rule revises the redesignates and provision regarding rating disabled veterans to clarify rating process.
§ 430.206(a)	§ 430.208(a)	Proposed rule revises and redesignates requirement for rating of record to eliminate repeating information in the definition and permits agencies to use formats other than paper to give ratings of record to employees.
§ 430.206(b)		Proposed rule deletes a provision repeated in current § 430.205(c) and proposed § 430.207(b) (see above).
§ 430.206(c)	§ 430.208(e)	Proposed rule limits requirement for higher-level approval to ''Unacceptable'' ratings of record to provide greater flexibility.
§ 430.206(d)	§ 430.208(c)	Proposed rule revises and redesignates the prohibition of forced distribution, but limits it to ratings below Level 3 or to situations where employees are rated only against pre-established standards, and removes the requirement that agencies establish procedures to ensure that only those employees who exceed normal expectations receive ratings above Fully Successful. These changes are made to provide greater flexibility.
§ 430.206(e)	§ 430.208(g)	Proposed rule makes editorial changes to provision regarding extension of appraisal period to clarify the rating process and provide greater flexibility.
§ 430.206(f)	§ 430.209(b)	Proposed rule revises and redesignates the requirements to transfer ratings of record when employees go to a new agency or organization to clarify the rating process.
§ 430.207		Proposed rule deletes reserved secton for performance appraisal advisory committees that is not needed.
§ 430.208	§ 430.209 (c) & (d)	Proposed rule replaces the requirement for training supervisors and employees on the appraisal process with requirement to communicate about the relevant parts of the system(s) and programs to reflect emphasis on communication and provide graeter flexibility, and retains the requirement to evaluate system(s) and programs.
§ 430.209	§ 430.209(g)	Proposed rule moves the requirement for agencies to take corrective actions to clarify responsibilities.
	§ 430.210	Proposed rule revises and redesignates OPM role to reflect OPM's authority to review, evaluate, and direct corrective action.
§ 430.210	§ 430.209(a)	Proposed rule clarifies that each agency must submit its performance appraisal system(s) for OPM approval.
Subpart E Performance Awards.		Proposed rule deletes this subpart and combines the provision for performance awards into other sections of part 451 to integrate awards policy and support NPR goals.
§ 430.501(a)	§ 451.101	Proposed rule revises and redesignates the reference to chapter 43, United States Code to accommodate relocation of information.
§ 430.501(b)	§ 451.101(c)	Proposed rule makes editorial changes to provision regarding definition of employees to accommodate relocation of information.
§ 430.501(c)	§ 451.101(c)	Proposed rule makes editorial changes to provision regarding definition of agencies to accommodate relocation of information.
§ 430.501(d)		Proposed rule deletes reference to part 451 for regulatory requirements for granting superior accomplishment awards that is no longer needed.
§ 430.502		Proposed rule deletes definitions for performance award, performance award budget, Performance Management Plan, and rating of record that are no longer needed.
§ 430.503(a)		Proposed rule deletes purpose section for performance awards that is no longer needed.
§ 430.503(b)	§ 451.104(a)(3)	Proposed rule revises and redesignates the provision to permit use of a rating of record as the basis for granting an award to accommodate relocation of information.

Current rule	Proposed rule	Description of change
§ 430.503(c)	§ 451.106(g)	Proposed rule replaces requirement to document awards in OPF with provision for agencies to establish criteria to determine which awards to document in OPF to provide greater flexibility.
§ 430.503(d)	§ 451.106(h)	Proposed rule redesignates provision for giving due weight to awards in promotions without change.
§ 430.503(e)		Proposed rule deletes recommendation to make maximum use of awards authority to remove nonessential information.
§ 430.504(a)		Proposed rule deletes repetition of the statutory percentage limits for performance-based cash awards at 5 U.S.C. 4505a(a)(2)(A).
§ 430.504(b)	§ 451.104(b)	Proposed rule revises and redesignates the provision that cash awards are paid as lump sums to accommodate relocation of information.
§ 430.504(c)	§ 451.104(g)	Proposed rule makes editorial changes regarding application of locality pay to clarify language.
§ 430.504(d)	§ 451.103(c)	Proposed rule replaces higher level review of awards based on a rating of record with requirement to follow agency financial management control procedures to give flexibility while maintaining necessary levels of control.
§ 430.504(e)	§ 451.104(h)	Proposed rule moves the provision that a performance-based cash award and its amount cannot be appealed (5 U.S.C. 4505a (b)(2)). Resulting rule covers all awards under this subpart. This change is made to accommodate relocation of information and to reflect that appeal rights are granted specifically by statute.
§ 430.505		Proposed rule deletes this section requiring OPM approval of award plans to ease administrative burden.
§ 430.506(a)	§ 451.103(a)	Proposed rule revises and redesignates the provision to establish award programs to support NPR goals.
§ 430.506(b)(1) & (2)		Proposed rule deletes requirement for OPM approval of agency award plans and changes to them to ease administrative burden.
§ 430.506(b)(3)	§ 451.106(b)	Proposed rule revises and redesignates the requirement for submitting awards in excess of $10,000 to OPM to clarify the approval process.
§ 430.506(b)(4)	§ 451.106(e)	Proposed rule replaces required reports with requirement to report cash and time off awards to CPDF to reduce reporting requirements.
§ 432.103(b)	§ 432.103(b)	*Critical element* is revised to conform with its new definition in § 430.203.
§ 451.101	§ 451.101(a)	Proposed rule makes editorial changes to section addressing statutory authority to accommodate relocated rating-based award information.
	§ 451.101(b)	Proposed rule adds existing requirement for OPM to prescribe procedures governing payment of certain types of awards recommended by more than one agency for a member of the armed forces as provided by Executive Order 11438, and existing authority for OPM approval of requests to extend 5 U.S.C. 4505a to non-General Schedule employees as provided by Executive Order 12828.
	§ 451.101(c)	Proposed rule combines location of statutory definitions currently in § 451.101(b) & (c).
	§ 451.101(d)	Proposed rule deletes reference to Part 430, subpart E (performance awards) that no longer applies.
§ 451.102		Proposed rule deletes description of superior accomplishment awards because it is not needed.
§ 451.103	§ 451.102	*Award* or *superior accomplishment award* is replaced and revised by *Award* to accommodate team settings; *Contribution, Intangible benefits, Non-monetary award, Performance Management Plan, Special act or service* (including requirement that contribution be nonrecurring), *Superior accomplishment award*, and *Tangible benefits* are deleted to increase flexibility and because they are not needed to give meaning to the provisions of part 451; and a definition for award program is added to support NPR goals.
§ 451.104(a)	§ 451.103(a)	Proposed rule revises and redesignates reference to agency developed program(s) to provide greater flexibility.
	§ 451.103(b)	Proposed rule adds new provision to encourage employee involvement in system and program development to support NPR goals.
	§ 451.104(a)	Proposed rule combines the various bases for granting awards into one section to reflect relocated information and support NPR goals.
§ 451.104(b)		Proposed rule deletes an emphasis on determining a contribution's value to the Government instead of to the agency to increase flexibility.
§ 451.104(c)		Proposed rule deletes explicit permission to grant different awards and/or quality step increases simultaneously for the same contribution(s) because it is not needed.
§ 451.104(d)		Proposed rule deletes provision that awards cannot be used as substitutes for pay or other personnel actions because it is not needed.
§ 451.104(e)(1)		Proposed rule deletes repetition of statutory requirement regarding contributions made while a Government employee (5 U.S.C. 4505).
§ 451.104(e)(2)	§ 451.103(c)(2)	Proposed rule revises and redesignates the provision for justification of awards to protect integrity of award programs.
§ 451.104(e)(3)	§ 451.103(c)(1)	Proposed rule replaces requirement for higher-level review of awards with requirement to follow agency financial management control procedures to give flexibility while maintaining necessary levels of control.
§ 451.104(f)	§ 451.104(e)	Proposed rule redesignates provision for granting awards to heirs or estates, and deletes the repetition of a statutory requirement (5 U.S.C. 4502 (c)) that acceptance of an award releases the Government from further claim.
	§ 451.105	Proposed rule adds new section regarding statutory restrictions on granting awards to senior political officials (5 U.S.C. 4508 and 4509) to clarify coverage.

Current rule	Proposed rule	Description of change
	§ 451.106(a)	Proposed rule rule adds new provision that requires agencies to ensure that an award program does not conflict with any other applicable law or Governmentwide regulation to protect the integrity of award programs.
§ 451.104(g)	§ 451.106(i)	Proposed rule revises and redesignates the provision permitting agencies to determine which awards are to be documented in the OPF to provide greater flexibility.
§ 451.104(h)	§ 451.106(h)	Proposed rule revises and redesignates the provision for giving due weight to awards in promotions to reflect more accurately the statutory provision.
§ 451.104(i)	§ 451.106(c)	Proposed rule replaces the requirement for agencies to provide training to supervisors and employees on its award program(s) with requirement to provide for communicating about award program(s) to reflect emphasis on communication and provide greater flexibility.
	§ 451.106(d)	Proposed rule revises and redesignates the provision requiring agencies to evaluate award programs to provide greater flexibility.
§ 451.104(j)	§ 451.103(c)(1)	Proposed rule replaces requirement for higher-level approval of awards with requirement to follow agency financial management control procedures to give flexibility while maintaining necessary levels of control.
§ 451.105(a)	§ 451.104 (b)&(c)	Proposed rule revises and redesignates the provisions regarding award payments and taxation to accommodate relocation of information and to clarify requirements.
§ 451.105(b)	§ 451.104(d)(1)	Proposed rule makes editorial changes to paragraph addressing agency responsibility for award payment when the award is approved for an employee of another agency to streamline regulatory text.
§ 451.105(c)	§ 451.104(d)(2)	Proposed rule makes editorial changes to paragraph regarding payment of an award approved for a member of the armed forces for a suggestion, invention, or scientific achievement to streamline regulatory text.
§ 451.106(a)		Proposed rule deletes OPM approval of superior accomplishment awards component of Performance Management Plans to ease administrative burden.
§ 451.106(b)	§ 451.107(a)	Proposed rule clarifies that the limits established for award payments apply to individuals only to provide greater flexibility.
	§ 451.107(b)	Proposed rule establishes explicitly that Presidential approval is required for award payments over $25,000 that OPM has approved to clarify the award approval process.
§ 451.107(a)		Proposed rule deletes the requirement to submit a superior accomplishment awards component of a Performance Management Plan to OPM for approval to ease administrative burden.
§ 451.107(a)(3)	§ 451.106(b)	Proposed rule makes editorial changes to provision that agencies shall submit to OPM for approval all award recommendations that would grant an individual more than $10,000 to clarify the award approval process.
§ 451.107(a)(4)	§ 451.106(e)	Proposed rule replaces requirement for an annual report on the program's activities and expenditures with a requirement to report all cash and time off awards to the CPDF to reduce reporting requirements.
	§ 451.106(f)	Proposed rule adds provision for agencies to use OPM Guide to Federal Workforce Reporting Systems when reporting award data to ensure proper reporting.
	§ 451.106(g)	Proposed rule permits OPM to define the records it requires to meet the information needs of agencies and other stakeholders.
	§ 451.106(j)	Proposed rule adds provision requiring agencies to take corrective actions prescribed by OPM to ensure compliance with law and regulation.
§ 451.107(b)		Proposed rule deletes requirement that agencies consider adopted ideas for wider application both within the agency and Governmentwide to provide greater flexibility.
	§ 451.107(c)	Proposed rule adds requirement for OPM to review and determine whether to approve requests to extend the provisions of 5 U.S.C. 4505a to non-General Schedule employees to implement Executive Order 12828.
	§ 451.107(d)	Proposed rule adds new provision that permits OPM to evaluate the application and operation of agency award program(s) to support OPM's oversight responsibilities.
§ 451.201	§ 451.201	Proposed rule adds new sentence to end of paragraph (a) that cautions that Presidential awards under this paragraph are subject to the restrictions as specified in § 451.105 (the statutory restrictions at 5 U.S.C. 4508 and 4509) to implement statute.
Subpart C Time Off Awards.		Proposed rule deletes this subpart and combines the provisions for time-off awards into other sections of part 451 to integrate awards policy and support NPR goals.
§ 451.306(d)	§ 451.104(f)	Proposed rule redesignates the provision prohibiting the conversion of time off to cash with no change.
§ 531.401(c)&(d)	§ 531.401(c)&(d)	Proposed rule includes the title of Executive Order 11721 and Public Law 103–89 for easier reference.
§ 531.402(a)	§ 531.402(a)	Proposed rule replaces reference to maximum step with maximum rate to accommodate GM employees.
§ 531.403	§ 531.403	*Acceptable level of competence* is revised to remove reference to duties of the position to conform with definition of critical element at § 430.203 and to include agency head in setting requirements to provide greater flexibility. *Critical element* is revised to update reference to the redesignated definition section in performance appraisal regulation. *Equivalent increase* is revised to include reference to higher rate of the grade to accommodate GM employees.
§ 531.404	§ 531.404	Proposed rule replaces step 10 with maximum rate of the grade to accommodate GM employees.

Current rule	Proposed rule	Description of change
§ 531.404(a)	§ 531.404(a)	Proposed rule deletes reference to duties of the position to conform with definition of critical element at § 430.203 and replaces reference to the locus of the rating of record definition from the agency Performance Management Plan to the regulation at § 430.204 to accommodate regulatory changes.
§ 531.408	§ 531.409(b)	Proposed rule revises and redesignates provisions for communicating performance requirements by including a reference to subpart B, replacing appraisal requirements by OPM for systems not under part 430 with agency-established requirements, and making other editorial changes to conform with revised terms in part 430 to provide greater flexibility.
	§ 531.409(c)(2)	Proposed rule adds new provision to permit opportunity period and notice period as reasons for delay of an ALOC (acceptable level of competence) determination to provide greater flexibility.
§ 531.409(c)(2) (i) & (iii)	§ 531.409(c)(3) (i) & (iii)	Proposed rule redesignates provisions regarding within-grade increase delays with no change.
§ 531.409(c)(2)(ii)	§ 531.409(c)(3)(ii)	Proposed rule makes editorial changes to conform with the revised terms in part 430 and to reference opportunity period.
	§ 531.409(c)(3)(iv)	Proposed rule adds requirement that within-grade increase is not granted if performance is not at an acceptable level of competence and references follow-up procedures to clarify the within-grade increase process.
§ 531.409(d)	§ 531.409(d)	Proposed rule makes editorial changes to conform with the revised terms in part 430.
	§ 531.409(d)(5)	Proposed rule adds new provision that includes 100% time spent on authorized activities of official interest to the agency as a reason to waive an ALOC determination to grant greater flexibility.
§ 531.409(d)(5)	§ 531.409(d)(6)	Proposed rule redesignates provision regarding long-term training with no change.
§ 531.501	§ 531.501	Proposed rule includes the title of Executive Order 11721 for easier reference and removes partial content of the Executive Order from regulation because it is not needed.
§ 531.503	§ 531.503	Proposed rule establishes a merit system principle rather than referencing recognition of outstanding performance as the context for granting QSI's to accommodate regulatory change at § 531.504.
§ 531.504	§ 531.504	Proposed rule revises the provision to permit agencies that choose not to have a Level 5 rating in their appraisal programs to establish performance-related criteria to grant QSI's to provide greater flexibility.
§ 531.506	§ 531.506	Proposed rule removes reference to completion of rating of record and ties effective date to approval of QSI to provide greater flexibility.
§ 531.507		Proposed rule removes requirement to include QSI plan as part of Performance Management Plan to ease administrative burden.
§ 531.507(a)-(e)	§ 531.507(a)	Proposed rule references rather than repeats the requirements of Executive Order 11721 because they are not needed.
§ 531.508(a)	§ 531.507(b)	Proposed rule revises and redesignates requirement for reporting QSI usage to clarify responsibility.
	§ 531.507(c)	Proposed rule requires use of OPM's Guide to Federal Workforce Reporting Systems for CPDF reporting to ensure proper reporting.
§ 531.508(b)	§ 531.508	Proposed rule redesignates the provision for OPM evaluation with no change in text.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they apply only to Federal agencies and employees.

List of Subjects

5 CFR Parts 430 and 451

Decorations, medals, awards, Government employees.

5 CFR Part 432

Administrative practice and procedure, Government employees.

5 CFR Part 531

Government employees, Law enforcement officers, Wages.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is proposing to amend parts 430, 432, 451 and 531 of title 5, Code of Federal Regulations, as follows:

PART 430—PERFORMANCE MANAGEMENT

1. The authority citation for part 430 is revised to read as follows:

Authority: 5 U.S.C. chapter 43.

2. Subpart A is revised to read as follows:

Subpart A—Performance Management

Sec.
430.101 Authority.
430.102 Performance management.

Subpart A—Performance Management

§ 430.101 Authority.

Chapter 43 of title 5, United States Code, provides for performance appraisal of Federal employees. This subpart supplements and implements this portion of the law.

§ 430.102 Performance management.

(a) Performance management is the systematic process by which an agency involves its employees, as individuals and members of a group, in improving organizational effectiveness in the accomplishment of agency mission and goals.

(b) Performance management integrates the processes an agency uses to—

(1) Communicate and clarify organizational goals to employees;

(2) Identify individual and, where applicable, team accountability for accomplishing organizational goals;

(3) Identify and address developmental needs for individuals and, where applicable, teams;

(4) Assess and improve individual and organizational performance;

(5) Use appropriate measures of performance as the basis for recognizing and rewarding accomplishments; and

(6) Use the results of performance appraisal as a basis for appropriate personnel actions.

(c) A Performance Management Plan is the description of an agency's framework for implementing all aspects of performance management and shall include, but not be limited to, the agency performance appraisal system(s) (as defined in §§ 430.203 and 430.303) and the agency award program(s) (as defined in § 451.102).

3. Subpart B, consisting of §§ 430.201 through 430.210, is revised to read as follows:

Subpart B—Performance Appraisal for General Schedule, Prevailing Rate, and Certain Other Employees

Sec.

Subpart B—Performance Appraisal for General Schedule, Prevailing Rate, and Certain Other Employees

§ 430.201 General.

(a) *Statutory authority.* Chapter 43 of title 5, United States Code, provides for the establishment of agency performance appraisal systems and requires the Office of Personnel Management (OPM) to prescribe regulations governing such systems. The regulations in this subpart in combination with statute set forth the requirements for agency performance appraisal system(s) and program(s) for employees covered by subchapter I of chapter 43.

(b) *Savings provision.* The performance appraisal system portion of an agency's performance management plan approved by OPM as of the effective date of these regulations shall constitute an approved performance appraisal system under these regulations until such time changes to the system are approved. No provision of these regulations shall be applied in such a way as to affect any administrative proceeding related to any action taken under regulations in this chapter pending at the effective date of the regulations in this subpart.

§ 430.202 Coverage.

(a) *Employees and agencies covered by statute.* (1) Section 4301(1) of title 5, United States Code, defines agencies covered by this subpart.

(2) Section 4301(2) of title 5, United States Code, defines employees covered by statute by this subpart. Besides General Schedule (GS/GM) and prevailing rate employees, coverage includes, but is not limited to, senior-level and scientific and professional employees paid under 5 U.S.C. 5376.

(b) *Statutory exclusions.* This subpart does not apply to agencies or employees excluded by 5 U.S.C. 4301(1) and (2), the United States Postal Service, or the Postal Rate Commission.

(c) *Administrative exclusions.* OPM may exclude any position or group of positions in the excepted service under the authority of 5 U.S.C. 4301(2)(G). This regulation excludes excepted service positions for which employment is not reasonably expected to exceed the minimum period established by the agency under § 430.207(a) in a consecutive 12-month period.

(d) *Agency requests for exclusions.* Heads of agencies or their designees may request the Director of OPM to exclude positions in the excepted service. The request must be in writing, explaining why the exclusion would be in the interest of good administration.

§ 430.203 Definitions.

In this subpart, terms are defined as follows:

Appraisal means the process under which performance is reviewed and evaluated.

Appraisal period means the period of time (generally 1 year) established by an agency for which performance will be reviewed and a rating of record will be prepared.

Appraisal program means the specific procedures and requirements established by an agency or the components of an agency within the policies and parameters covered by the agency appraisal system(s).

Appraisal system means the framework of agencywide policies and parameters for the administration of performance appraisal programs established under subchapter I of chapter 43 of title 5, United States Code, and this subpart within an agency as defined at 5 U.S.C. 4301(1).

Critical element means a work assignment or responsibility of such importance that unacceptable performance on the element would result in a determination that overall performance is unacceptable.

Performance means accomplishment of work assignments or responsibilities.

Performance appraisal system: see Appraisal system.

Performance plan means all of the written, or otherwise recorded, individual, team, or organizational performance factors that lead to the assignment of an employee's summary rating level. A plan contains the critical elements based on employee assignments and responsibilities, and their related performance standard(s), and may contain other performance-related factors including, but not limited to, non-critical elements.

Performance rating means the written, or otherwise recorded, appraisal of performance compared to the performance standard(s) for each critical element (and non-critical element, where applicable) on which there has been an opportunity to perform for the minimum period.

Performance standard means the management-approved expression of the performance threshold(s), requirement(s), or expectation(s) for an element that must be met to be appraised at a particular level of performance (as specified in § 430.206(b)(6)(i) of this subpart). A performance standard may include, but is not limited to, factors such as quality, quantity, timeliness, and manner of performance.

Progress review means communicating with the employee about performance on individual and, where applicable, team elements and standard(s).

Rating of record means the performance rating prepared at the end of an appraisal period (under provisions specified by the agency) for performance over the entire period and the assignment of a summary rating level (as specified in § 430.208(d)). This constitutes the official rating of record referenced in this chapter.

§ 430.204 Agency performance appraisal system(s).

(a) Each agency as defined at section 4301(1) of title 5, United States Code, shall develop one or more performance appraisal systems for employees covered by this subpart.

(b) The agency system(s) shall establish agencywide policies and parameters for the application and operation of performance appraisal within the agency. At a minimum, an agency system shall—

(1) Provide for—

(i) Establishing employee performance plans, including, but not limited to, critical elements and performance standards;

(ii) Communicating performance plans to employees at the beginning of an appraisal period;

(iii) Evaluating each employee during the appraisal period on the employee's elements and standards;

(iv) Recognizing and rewarding employees whose performance so warrants;

(v) Assisting employees in improving unacceptable performance; and

(vi) Reassigning, reducing in grade, or removing employees who continue to have unacceptable performance, but only after an opportunity to demonstrate acceptable performance.

(2) Identify employees covered by the system;

(3) Establish the permissible values (including, but not limited to, number of days and number of levels) that an agency program may use for—

(i) The appraisal period (as specified in § 430.206(a));

(ii) The minimum period (as specified in § 430.207(a));

(iii) The number(s) of performance levels at which elements shall be appraised (as specified in § 430.206(b)(6)); and

(iv) The number of summary rating levels that may be assigned in a rating of record (as specified in § 430.208(d)); and

(4) Include, where applicable, criteria and procedures for establishing separate appraisal programs within the agency; and

(5) Require that an agency appraisal program shall conform to statute and the regulations of this chapter.

(c) Agencies are encouraged to involve employees and their representatives in developing and implementing their system(s).

§ 430.205 Agency performance appraisal program(s).

(a) Each agency shall establish at least one appraisal program of specific procedures and requirements to be implemented in accordance with the agency's appraisal system(s). At a minimum, each appraisal program shall include procedures and requirements for planning performance as specified in § 430.206, monitoring performance as specified in § 430.207, and rating performance as specified in § 430.208.

(b) An agency program shall establish criteria and procedures to address employee performance for employees who are on detail, who are transferred, or for other special circumstances as established by the agency.

(c) An agency may permit the development of separate appraisal programs under the framework of its appraisal system(s).

(d) Agencies are encouraged to involve employees and their representatives in developing and implementing their program(s).

§ 430.206 Planning performance.

(a) *Appraisal period.* (1) An appraisal program shall designate an official appraisal period for which a performance plan shall be prepared, during which performance shall be monitored, and for which a rating of record shall be prepared.

(2) The appraisal period shall generally be designated so that employees shall be provided a rating of record on an annual basis. An appraisal program may provide that longer appraisal periods may be designated when work assignments and responsibilities so warrant or performance management objectives can be achieved more effectively.

(b) *Performance plan.* (1) Agencies shall encourage employee participation in establishing performance plans.

(2) Performance plans shall be provided to employees at the beginning of each appraisal period (normally within 30 days).

(3) An appraisal program shall require that each employee be covered by an appropriate written, or otherwise recorded, performance plan based on work assignments and responsibilities.

(4) Each performance plan shall include at least one critical element that addresses individual performance.

(5) When appropriate, performance plans may also include accomplishment of team, group, or organizational objectives by incorporating elements, objectives, goals, program plans, work plans, or by other similar means that account for program results.

(6) (i) An appraisal program shall provide for establishing the number of levels at which performance on an element may be appraised. At a minimum, two levels shall be used, with one level being ''Fully Successful'' or its equivalent and another level being ''Unacceptable.''

(ii) A performance standard shall be established at the ''Fully Successful'' level for each element and may be established at other levels.

(iii) The absence of an established standard at a level specified in the program shall not preclude a determination that performance is at that level.

§ 430.207 Monitoring performance.

(a) *Minimum period.* An appraisal program shall establish a minimum period before any performance determination can be made.

(b) *Ongoing appraisal.* An appraisal program shall include methods for appraising each element in the performance plan during the appraisal period, unless there has been insufficient opportunity to demonstrate performance on the element. Such methods shall include, but not be limited to, conducting one or more progress reviews during each appraisal period.

(c) *Unacceptable performance.* At any time during the appraisal period that performance is determined to be unacceptable in one or more critical elements, an appraisal program shall provide for—

(1) Assisting employees in improving unacceptable performance; and

(2) Taking action based on unacceptable performance.

§ 430.208 Rating performance.

(a) As soon as practicable after the end of the appraisal period, a written, or otherwise recorded, rating of record shall be given to each employee.

(b) Rating of record procedures for each appraisal program shall include a method for deriving a summary rating and assigning a summary rating level as specified in paragraph (d) of this section based at a minimum on appraisal of performance on critical elements, and, at agency discretion, consideration of other performance-related factors including, but not limited to, appraisal of performance on non-critical elements.

(1) A summary rating above Level 1 (''Unacceptable'') shall not be assigned if performance on any critical element has been appraised as ''Unacceptable.''

(2) Consideration of other performance-related factors shall not result in assigning a summary rating of Level 1 (''Unacceptable'') if each critical element has been appraised at least ''Fully Successful'' (or equivalent).

(c) An appraisal program shall not establish a forced distribution of summary ratings—

(1) Below Level 3 (''Fully Successful'' or equivalent); or

(2) If those summary ratings are derived solely from an appraisal of performance against pre-established standards.

(d) Summary rating levels. (1) An appraisal program shall provide for—

(i) At least two and not more than five summary rating levels;

(ii) A Level 1 (''Unacceptable'') summary rating level; and

(iii) A Level 3 (''Fully Successful'' or equivalent) summary rating level.

(2) If more than two summary rating levels are used, agencies may provide for any combination of additional summary rating levels (Level 2, Level 4, and Level 5) provided that—

(i) Level 2, if used, is a rating level above Level 1 and below Level 3; and

(ii) Level 4, if used, is a rating level above Level 3 and below Level 5 (''Outstanding'' or equivalent), if used.

(3) The term ''Outstanding'' shall be used only to describe a Level 5 summary rating level.

(4) The summary rating level designator (Level 1 through Level 5) shall be used to provide consistency in describing ratings of record and in referencing other related regulations (including, but not limited to, § 351.504 of this chapter).

(e) A rating of record of ''Unacceptable'' (Level 1) shall be reviewed and approved by a higher level management official.

(f) The rating of record or performance rating for a disabled veteran shall not be lowered because the veteran has been absent from work to seek medical treatment as provided in Executive Order 5396.

(g) When a rating of record cannot be prepared at the time specified, the appraisal period shall be extended. Once the conditions necessary to complete a rating of record have been met, a rating of record shall be prepared as soon as practicable.

(h) A performance rating may be prepared at such other times as an appraisal program may specify for special circumstances including, but not limited to, transfers and performance on details.

§ 430.209 Agency responsibilities.

An agency shall—

(a) Submit to OPM for approval a description of its appraisal system(s) as specified in § 430.204(b) of this subpart, and any subsequent changes that modify any element of the agency's system(s) that is subject to a regulatory requirement in this part;

(b) Transfer the employee's most recent rating of record, and any subsequent performance ratings, when an employee transfers to another agency or is assigned to another organization within the agency;

(c) Require communication with supervisors and employees about relevant parts of its performance appraisal system(s) and program(s);

(d) Evaluate the performance appraisal system(s) contained in its Performance Management Plan and performance appraisal program(s) in operation in the agency;

(e) Use OPM's Guide to Federal Workforce Reporting Systems to report ratings of record data to the CPDF;

(f) Maintain and submit such records as OPM may require; and

(g) Take any action required by OPM to ensure conformance with applicable law, regulation, and OPM policy.

§ 430.210 OPM responsibilities.

(a) OPM shall review and approve an agency's performance appraisal system(s).

(b) OPM may evaluate the operation and application of an agency's performance appraisal system(s) and program(s).

(c) If OPM determines that an appraisal system or program does not meet the requirements of applicable law, regulation, or OPM policy, it shall direct the agency to implement an appropriate system or program or to take other corrective action.

4. Subpart D [Reserved] and Subpart E, consisting of §§ 430.501 through 430.506, are removed.

PART 432—PERFORMANCE BASED REDUCTION IN GRADE AND REMOVAL ACTIONS

5. The authority citation for part 432 continues to read as follows:

Authority: 5 U.S.C. 4303, 4305.

6. In § 432.103, paragraph (b) is revised to read as follows:

§ 432.103 Definitions.

* * * * *

(b) *Critical element* means a work assignment or responsibility of such importance that unacceptable performance on the element would result in a determination that overall performance is unacceptable.

* * * * *

PART 451—AWARDS

7. The heading of part 451 is revised to read as follows:

PART 451—AWARDS

8. The authority citation for part 451 is revised to read as follows:

Authority: 5 U.S.C. 4302, 4501–4507; E.O. 11438, 12828.

9. Subpart A, consisting of §§ 451.101 through 451.107, is revised to read as follows:

Subpart A—Agency Awards

Sec.

Subpart A—Agency Awards

§ 451.101 Authority and coverage.

(a) Chapter 45 of title 5, United States Code authorizes agencies to pay a cash award to, grant time-off to, and incur necessary expense for the honorary recognition of, an employee (individually or as a member of a group) and requires the Office of Personnel Management to prescribe regulations governing such authority. Chapter 43 of title 5, United States Codes provides for recognizing and rewarding employees whose performance so warrants. The regulations in this subpart, in combination with the chapters 43 and 45, United States Code, and any other applicable law, establish the requirements for agency award programs.

(b) Section 4 of E.O. 11438 (Prescribing Procedures Governing Interdepartmental Cash Awards to the Members of the Armed Forces, December 3, 1968) requires the Office of Personnel Management to prescribe procedures for covering the cost of a cash award recommended by more than one agency for a member of the armed forces for the adoption or use of a suggestion, invention, or scientific achievement. Section 1 of E.O. 12828 (Delegation of Certain Personnel Management Authorities, January 5, 1993) delegates to the Office of Personnel Management the authority of the President to permit performance-based cash awards under 5 U.S.C. 4505a to be paid to categories of employees who would not be eligible otherwise.

(c) This subpart applies to employees as defined by section 2105 and agencies as defined by section 4501 of title 5, United States Code, except as provided in §§ 451.105 and 451.201(a).

(d) For the regulatory requirements for granting performance awards to Senior Executive Service (SES) employees based on an employee's performance appraisal and rating of record, refer to § 534.403 of this chapter.

§ 451.102 Definitions.

Award means something bestowed or an action taken to recognize and reward individual or team achievement that contributes to meeting organizational goals or improving the efficiency, effectiveness, and economy of the Government or is otherwise in the public interest. Such awards include, but are not limited to, employee incentives (e.g., agency productivity gainshares), which are based on predetermined criteria such as productivity standards, performance goals, measurement systems, award formulas, or payout schedules.

Award program means the specific procedures and requirements established by an agency or a component of an agency for granting awards under subchapter I of chapter 43 and of chapter 45 of title 5, United States Code, and this subpart.

§ 451.103 Agency award program(s).

(a) Agencies shall develop one or more award programs for employees covered by this subpart.

(b) Agencies are encouraged to include employees and their representatives in developing such programs.

(c) An agency award program shall provide for—

(1) Obligating funds consistent with applicable agency financial management controls and delegations of authority; and

(2) Documenting justification for awards that are not based on a rating of record (as defined in § 430.203 of this chapter).

§ 451.104 Awards.

(a) An agency may grant a cash, honorary, or informal recognition award, or grant time-off without charge to leave or loss of pay consistent with chapter 45 of title 5, United States Code, and this part to an employee, as an individual or member of a group, on the basis of—

(1) A suggestion, invention, superior accomplishment, or other personal effort that contributes to the efficiency, economy, or other improvement of Government operations or achieves a significant reduction in paperwork;

(2) A special act or service in the public interest in connection with or related to official employment; or

(3) Performance as reflected in the employee's most recent rating of record (as defined in § 430.203 of this chapter), except that such awards may be paid to SES employees only under § 534.403 of this chapter and not on the basis of this subpart.

(b) A cash award under this subpart is a lump sum in addition to regular pay and does not increase an employee's rate of basic pay.

(c) An award is subject to the withholding of taxes.

(d) When an award is approved for—

(1) An employee of another agency, the benefiting agency shall make arrangements to transfer funds to the employing agency to cover the award. If the administrative costs of transferring funds would exceed the amount of the award, the employing agency shall absorb the award costs and pay the award; and

(2) A member of the armed forces for a suggestion, invention, or scientific achievement, arrangements shall be made to transfer funds to the agency having jurisdiction over the member in accordance with E.O. 11438, ''Prescribing Procedures Governing Interdepartmental Cash Awards to the Members of the Armed Forces''.

(e) An award may be granted to the legal heirs or estates of deceased employees.

(f) A time-off award granted under this subpart shall not be converted to a cash payment under any circumstances.

(g) When granting an award on the basis of a rating of record that is paid as a percentage of basic pay under 5 U.S.C. 4505a(a)(2)(A), the rate of basic pay used shall be determined without taking into account any locality-based comparability payment under 5 U.S.C. 5304 or an interim geographic adjustment or special law enforcement adjustment under section 302 or 404 of the Federal Employees Pay Comparability Act of 1990, respectively.

(h) Employees may not appeal an agency's decision not to grant an award or the amount of such an award. This does not affect any right or remedy under subchapter II of chapter 12, chapter 71, or section 2302(d) of title 5, United States Code.

§ 451.105 Award restrictions.

(a) Agencies shall not grant awards under this subpart during a Presidential election period (as defined at 5 U.S.C. 4508) to employees who are—

(1) In the Senior Executive Service and not career appointees (i.e., non-career or limited appointees), or

(2) In an excepted service position of a confidential or policy-determining character (schedule C).

(b) Agencies shall not grant cash awards under this subpart to employees appointed by the President with Senate confirmation who serve in—

(1) An Executive Schedule position, or

(2) A position for which pay is set in statute by reference to a section or level of the Executive Schedule.

§ 451.106 Agency responsibilities.

(a) In establishing and operating its award program(s), an agency shall assure that a program does not conflict with or violate any other law or Governmentwide regulation.

(b) When a recommended award would grant over $10,000 to an individual employee, the agency shall submit the recommendation to OPM for approval.

(c) Agencies shall provide for communicating with employees and supervisors about the relevant parts of their award program(s).

(d) Agencies shall evaluate their award program(s).

(e) Agencies shall report all cash and time off awards to the CPDF.

(f) Agencies shall use OPM's Guide to Federal Workforce Reporting Systems to report award data to the CPDF.

(g) Agencies shall maintain and submit such records as OPM may require.

(h) Agencies shall give due weight to an award granted under this part in qualifying and selecting an employee for promotion as provided in 5 U.S.C. 3362.

(i) Agencies shall establish criteria for identifying which awards to document in the Official Personnel Folder in conformance with OPM's Guide to Personnel Recordkeeping.

(j) Agencies shall take any corrective action required by OPM to ensure conformance with applicable law, regulation, and OPM policy.

§ 451.107 OPM responsibilities.

(a) OPM shall review and approve or disapprove each agency recommendation for an award that would grant over $10,000 to an individual employee.

(b) When a recommended award would grant over $25,000 to an individual employee, OPM shall review the recommendation and submit it (if approved) to the President for final approval.

(c) OPM shall review and approve or disapprove a request from the head of an Executive agency to extend the provisions of 5 U.S.C. 4505a to any category of employees within that agency that would not be covered otherwise.

(d) OPM may evaluate the operation and application of an agency's award program(s).

10. In § 451.201, the second introductory paragraph (a) is removed, paragraph (b), (c), and (d) are redesignated as paragraphs (c), (d), and (e) respectively, and a new paragraph (b) is added to read as follows:

§ 451.201 Authority and coverage.

* * * * *

(b) Awards granted under paragraph (a) are subject to the restrictions as specified in § 451.105.

* * * * *

11. Subpart C, consisting of §§ 451.301 through 451.307, is removed.

PART 531—PAY UNDER THE GENERAL SCHEDULE

12. The authority citation for part 531 is revised to read as follows:

Authority: 5 U.S.C. 5115, 5307, and 5338; sec. 4 of Pub. L. 103–89, 107 Stat. 981; and E.O. 12748, 56 FR 4521, February 4, 1991, 3 CFR 1991 Comp., p. 316;

Subpart A also issued under 5 U.S.C. 5304, 5305, and 5553; section 302 of the Federal Employees Pay Comparability Act of 1990 (FEPCA), Pub. L. 101–509, 104 Stat. 1462; and E.O. 12786, 56 FR

67453, December 30, 1991, 3 CFR 1991 Comp., p. 376;

Subpart B also issued under 5 U.S.C. 5303(g), 5333, 5334(a), and 7701(b)(2);

Subpart C also issued under 5 U.S.C. 5304, 5305, and 5553; sections 302 and 404 of FEPCA, Pub. L. 101–509, 104 Stat. 1462 and 1466; and section 3(7) of Pub. L. 102–378, 106 Stat. 1356;

Subpart D also issued under 5 U.S.C. 5335(g) and 7701(b)(2);

Subpart E also issued under 5 U.S.C. 5336;

Subpart F also issued under 5 U.S.C. 5304, 5305(g)(1), and 5553; and E.O. 12883, 58 FR 63281, November 29, 1993, 3 CFR 1993 Comp., p. 682.

13. In § 531.401, paragraphs (c) and (d) are revised to read as follows:

§ 531.401 Principal authorities.

* * * * *

(c) Section 402 of E.O. 11721 (Providing for Federal Pay Administration, May 23, 1973), as amended, provides that ''The Civil Service Commission (Office of Personnel Management) shall issue such regulations and standards as may be necessary to ensure that only those employees whose work is of an acceptable level of competence receive periodic step-increases under the provisions of section 5335 of title 5, United States Code.''

(d) Section 4 of Public Law 103–89 (Performance Management and Recognition System Termination Act of 1993) provides that ''the Office of Personnel Management shall prescribe regulations necessary for the administration of this section.''

14. In § 531.402, paragraph (a) is revised to read as follows:

§ 531.402 Employee coverage.

(a) Except as provided in paragraph (b) of this section, this subpart applies to employees who occupy permanent positions classified and paid under the General Schedule and who are paid at less than the maximum rate of their grades.

* * * * *

15. In § 531.403, the definitions of *acceptable level of competence, critical element,* and *equivalent increase* are revised to read as follows:

§ 531.403 Definitions.

* * * * *

Acceptable level of competence means performance by an employee that warrants advancement of the employee's rate of basic pay to the next higher step of the grade (or, in the case of a GM employee, the next higher rate within the grade) of his or her position, subject to the requirements of § 531.404 of this subpart, as determined by the head of the agency.

* * * * *

Critical element has the meaning given that term in § 430.203 of this chapter.

* * * * *

Equivalent increase means an increase or increases in an employee's rate of basic pay equal to or greater than the difference between the employee's rate of basic pay and the rate of pay for the next higher step of that grade (or, in the case of a GM employee, the next higher rate within the grade).

* * * * *

16. In § 531.404, the introductory text, and the introductory text of paragraph (a) are revised to read as follows:

§ 531.404 Earning within-grade increase.

An employee paid at less than the maximum rate of the grade of his or her position shall earn advancement in pay to the next higher step of the grade or the next higher rate within the grade (as defined in § 531.403) upon meeting the following three requirements established by law:

(a) The employee's performance must be at an acceptable level of competence, as defined in this subpart by authority of section 402 of E.O. 11721, as amended. To be determined at an acceptable level of competence, the employee's most recent rating of record (as defined in § 430.203 of this chapter) shall be at least Level 3 (''Fully Successful'' or equivalent).

* * * * *

17. Section 531.408 is removed and reserved.

§ 531.408 [Reserved].

18. In § 531.409, paragraph (b) is revised, paragraph (c)(2) is redesignated as paragraph (c)(3) and revised, a new paragraph (c)(2) is added, the introductory text to paragraph (d) is revised, paragraph (d)(4) is revised, paragraph (d)(5) is redesignated as paragraph (d)(6), a new paragraph (d)(5) is added, and the concluding text at the end of paragraph (d) is revised to read as follows:

§ 531.409 Acceptable level of competence determinations.

* * * * *

(b) *Basis for determination.* When applicable, an acceptable level of competence determination shall be based on a current rating of record made under part 430, subpart B, of this chapter. For those agencies not covered by chapter 43 of title 5, United States Code, and for employees in positions excluded from 5 U.S.C. 4301, an acceptable level of competence determination shall be based on performance appraisal requirements established by the agency. If an employee has been reduced in grade because of unacceptable performance and has served in one position at the lower grade for at least the minimum period established by the agency, a rating of record at the lower grade shall be used as the basis for an acceptable level of competence determination.

(c) * * *

(2) An acceptable level of competence determination may be delayed during an employee's opportunity to demonstrate acceptable performance (as defined at § 432.103(d)) of this chapter or during a notice period for a proposed performance-based action under part 432 or 752 of this chapter.

(3) When an acceptable level of competence determination has been delayed under this subpart:

(i) The employee shall be informed that his or her determination is postponed and, where applicable, the rating period extended and shall be told of the specific requirements for performance at an acceptable level of competence.

(ii) An acceptable level of competence determination shall then be made upon completion of either the minimum period established by the agency or the opportunity to demonstrate acceptable performance.

(iii) If, following the delay, the employee's performance is determined to be at an acceptable level of competence, the within-grade increase shall be granted retroactively to the beginning of the pay period following completion of the applicable waiting period.

(iv) If, following the delay, the employee's performance is determined not to be at an acceptable level of competence, the within-grade increase shall not be granted. The provisions of § 531.411 govern the determination of an employee's acceptable level of competence following the withholding of a within-grade increase.

(d) *Waiver of requirement for determination.* An acceptable level of competence determination shall be waived and a within-grade increase granted when an employee has not served in any position for the minimum period under an applicable agency performance appraisal program during the final 52 calendar weeks of the waiting period for one or more of the following reasons:

* * * * *

(4) Because of details to another agency or employer for which no rating has been prepared;

(5) Because the employee has had insufficient time to demonstrate an acceptable level of competence due to authorized activities of official interest to the agency not subject to appraisal under part 430 of this chapter (including, but not limited to, labor-management partnership activities under section 2 of Executive Order 12871 and serving as a representative of a labor organization); or

* * * * *

In such a situation, there shall be a presumption that the employee would have performed at an acceptable level of competence had the employee performed the duties of his or her position of record for the minimum period under the applicable agency performance appraisal program.

19. Section 531.501 is revised to read as follows:

§ 531.501 Applicability.

This subpart contains regulations of the Office of Personnel Management to carry out section 5336 of title 5, United States Code, which authorizes the head of an agency, or another official to whom such authority is delegated, to grant quality step increases, and to carry out section 403 of Executive Order 11721 (Providing for Federal Pay Administration, May 23, 1973), as amended.

20. Section 531.503 is revised to read as follows:

§ 531.503 Purpose of quality step increases.

The purpose of quality step increases is to provide appropriate incentives and recognition for excellence in performance by granting faster than normal step increases.

21. Section 531.504 is revised to read as follows:

§ 531.504 Level of performance required for quality step increase.

A quality step increase shall not be required but may be granted only to—

(a) An employee who receives a rating of record at Level 5 (''Outstanding'' or equivalent), as defined in part 430, subpart B, of this chapter; or

(b) An employee who is covered by a performance appraisal program that does not have a Level 5 rating and who demonstrates sustained performance of high quality significantly above that expected at the ''Fully Successful'' level in the type of position concerned, as determined under performance-related criteria established by the agency.

22. Section 531.506 is revised to read as follows:

§ 531.506 Effective date of a quality step increase.

The quality step increase should be made effective as soon as practicable after it is approved.

23. Section 531.507 is revised to read as follows:

§ 531.507 Agency responsibilities.

(a) Agencies shall develop and implement a plan(s) for granting quality step increases in accordance with Executive Order 11721.

(b) Agencies shall maintain and report such records as the Office may require.

(c) Agencies shall use OPM's Guide to Federal Workforce Reporting Systems to report quality step increases to the CPDF.

24. Section 531.508 is revised to read as follows:

§ 531.508 Evaluation of quality step increase authority.

The Office of Personnel Management may evaluate an agency's use of the authority to grant quality step increases. The agency shall take any corrective action required by the Office.

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